Denver District Court Court address: **1437 Bannock Street** **Denver, CO 80202** Phone Number: **(303) 606-2300**	
LIBERTARIAN PARTY OF COLORADO, JAMES WILEY, Plaintiff, v. JENA GRISWOLD, CHRISTOPHER BEALL, Defendant	**Court Use Only**
Attorney or Party without Attorney Gary Fielder, Esq. Attorney for Plaintiff Leeann Morrill, Esq. Emily Buckley, Esq. Lily Nierenberg, Esq. Attorneys for Defendant	Case Number: 24CV33363 Division: 275

TRANSCRIPTIONIST'S TRANSCRIPT/FTR PROCEEDINGS

The following hearing was held on November 4, 2024, before The Honorable Kandace C. Gerdes, Judge of the Denver District Court.

This transcript is the Hearing Re Verified Petition Pursuant to C.R.S. 1-1-113 in its entirety as requested by the Colorado Department of State.

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(case begins at 1:56:14 p.m. FTR recording time; inaudibles due to speakerphone quality)

THE COURT: Thank you, good afternoon, you may be seated. Good afternoon, everyone. I apologize for the delay. We were having some technical issues that we needed to resolve that I believe have now been resolved. First order of business is that we have reached capacity for in-person, in courtroom observation. If you do not have a seat, you will not be allowed to stay. So please bear in mind, if there is not seating available, we have reached capacity in our courtroom and have been so advised by the Sheriff's Office. I will now read to you the order of conduct in this case. This applies to everyone. The sheriff's have been advised of this and if anyone is seen to have violated this, they will be removed and not allowed to reenter. The Court has permitted limited expanded media coverage pursuant to Chapter 38, Rule 3 of the Colorado Court Rules. Requesting media parties and no one else are authorized to capture video and/or still photographs of the proceeding from live stream and may rebroadcast them without sound subject to the following exceptions, and this applies to everyone, there shall be no audio, video, or still image capture of bench conferences; there shall be no audio, video, or still image capture of court staff; there shall be no audio, video, or still image capture of communication between counsel and client or between co-counsel; there will be no cameras, audio, or video recording equipment of any kind allowed in the courtroom. I'm advised that several people have already tested this out. Further actions will not be accepted. You will be

removed immediately and the sheriffs have been so directed. The use of any cameras or audio or video recording equipment of any kind is limited to designated media staging area on the second floor, the south side of the City and County Building. I should also advise that the social media is also being monitored in this case so if anyone is seen to be violating that, that will also result in your expulsion. Any interviews and press conferences are prohibited to take place in the City and County Building. Media representatives are permitted in the courtroom as well as they are permitted to tweet, blog, or send real time messages as long as those activities do not interfere with the proceedings. Media are not permitted to record any portion of the Court proceedings, nor may any member of the public, at large, record any proceedings. Attorneys for the parties may have and are permitted to use electronic devices to the extent necessary for their presentation on the case. Once the proceedings have begun, which is where we are, only the attorney for the parties or witnesses will be permitted to leave the courtroom and return as necessary. If anyone else, including members of the media or the public leaves before a break, they will not be permitted to return until there is a break. Seats cannot be saved or reserved without Court approval. Further, be advised that the Court may restrict or limit livestream access as may be necessary to preserve the dignity to the Court or protect the parties. Finally, the Court may terminate or suspend livestream access at any time upon making findings of fact that, one, the rules established have been violated or, two, the substantial rights of individual participants or the parties' right

to a fair proceeding will be prejudiced by such coverage if livestreaming is allowed to continue. Any violation of the foregoing order that I have read and also loaded and filed into this case, and any other conduct, which I find disruptive to the proceedings may result in either temporary or permanent exclusion from the proceedings, an order of contempt, or any other legal sanctions. We do have a matter that came up while the parties were gathering to this proceeding in the form of an emergency motion to intervene pursuant to Rule 24. I wanted to give each side a copy of that and make sure that they had an opportunity to review both the emergency motion as well as the emergency verified petition. Has petitioner been able to review that?

MR. FIELDER: Yes, Your Honor.

THE COURT: And has respondent?

MS. MORRILL: Yes, Your Honor.

THE COURT: All right, position with respect to the petitioner as to the motion to intervene?

MR. FIELDER: Your Honor, we have no objection.

THE COURT: All right, and for respondent?

MS. MORRILL: Thank you, Your Honor. Leeann Morrill, First Assistant Attorney General on behalf of respondents, who do object to the motion for leave to intervene. In reviewing it, albeit last minute, our understanding is that it is duplicative of the current petitioner's existing petition and therefore the only interest encompassed by the motion is in the nature of a generalized grievance that any individual with the same publicly known information about the passwords that will

be discussed at length here today has knowledge of. There is no special interest or right that Mr. Justice has explained to this Court as to why he needs to be heard. His interests are adequately represented by the existing petitioners.

THE COURT: All right, thank you. And is Mr. Justice present? All right, Mr. Justice, anything that you would like to say? I have had an opportunity to review your motion to intervene and verified petition.

MR. JUSTICE: Thank you. I would like to distinguish that I'm here in the capacity of an elector and not as a candidate or a defendant. The difference – the distinction in the – in the complaint mainly goes to the remedy. I'm asking for a very different remedy than what current plaintiffs are asking. Yes, the rest of the complaint is basically relying on the same facts and that's how I would support asking the Court to allow the intervention. Thank you.

THE COURT: Thank you. The Court has reviewed Rule 24 entitled, "Intervention of the Colorado Rules of Civil Procedure." In this case, this afternoon at approximately 1:48 p.m. an emergency verified petition and motion to intervene was filed in this case. Intervenor, David Justice, seeks intervention as a matter of right pursuant to Rule 24(a)(ii) of the Colorado Rules of Civil Procedure indicating that, upon timely application, anyone shall be permitted to intervene in an action when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may, as a practical matter, impair or impede his ability to protect that interest unless the applicant's

interest is adequately represented by existing parties. The Court, upon its review of the verified petition and the comments by requested intervenor Justice acknowledge and state that there is a separate prayer for relief than the current petitioner. Specifically, the Court notes that on page eight of nine, the intervenor requests a Court order directing Secretary Griswold, as a prerequisite to certification of the results of the November 5, 2024 election, to direct Colorado County Clerks to perform an analysis of the machines affected by the breach by comparing the results of a manual hand count of the original voter verified paper ballots to the machine count of those ballots and the intervenor so requests. The Court finds that this is a permissive intervention pursuant to Rule 24(b). Similarly, upon timely application, anyone is permitted to intervene when a statute confers – confers a conditional right to intervene, which is not present here, when an applicant's claim or defense and the main action have a question of law or fact in common. As the second basis, when a party to an action relies upon – relies for ground of claim or defense upon a statute, the agency may be permitted to intervene. In exercising its discretion under Rule 24(b), the Court shall consider whether the intervention would unduly delay or prejudice the adjudication of the rights of the original parties. The Court notes that in requesting the analysis or directing the Court to order that the Colorado County Clerks perform an analysis of the machines affected by the breach by comparing the results of a manual hand count of the original voter verified paper ballots to the machine count of those ballots. In this

case, there has been a request for decertification of those records requested by petitioner but, of note, the respondent, in their hearing brief, argue and represent, as officers of the court, that, in addition to the paper ballots in this case, there is a procedure known and protected through the risk limiting audit that audits the paper ballots with the voting tabulation machines to protect and to ensure that there is an auditing of records and comparing of records between the paper ballots and the machine count related to those ballots. Based upon that protection in this case and the request already made by petitioner intervenor in this case, the Court finds that in its discretion that the intervenor will not be allowed to proceed forward under permissive intervention. The Court finds that intervention as a matter of right is not appropriate and the motion to intervene is hereby denied. Mr. Justice, if you would step back behind the well? Thank you. Do we have any advisory witnesses, Mr. Fielder?

MR. FIELDER: No, thank you. I've got my-. Sorry, Your Honor, thank you. I have my expert witness that I think is waiting in the waiting room and, of course, he would like to watch the proceedings, Mr. Clay Parikh.

THE COURT: All right, and respondent's position?

MS. MORRILL: Your Honor, we do intend to object to Mr. Parikh's designation as an expert witness but understand that that will be taken up at a later point in the proceedings. So if the Court is inclined to allow him to listen to the proceedings through the Webex, we are – we will accept that. We have asked for reciprocity for two of the

Secretary's may call witnesses. Those are Hillary Rudy and Ben Edelen, both of whom are employees of her office and who likely will offer expert tony of their own. So we would – we would ask for that.

THE COURT: As advisory?

MS. MORRILL: Yes, Your Honor, and also we do have a party representative in the courtroom. That is Elliot Reaven with the Colorado Secretary of State's Office. With us at counsel table is a party, Deputy Secretary Beall, and we also have a paralegal from the Attorney General's Office, Carmen Van Pelt, who is part of our litigation team.

THE COURT: All right.

MS. MORRILL: Your Honor, forgive me, I may have, you know, not heard it but I did not hear the Court call the case and do entries. I – I just want for the record to be clear that we're on the record.

THE COURT: We are on the record and let me, as a formality now that we've gone through some of the preliminary housekeeping matters, for purposes of calculating time and on the record, call 24CV33363, the Libertarian Party of Colorado et al. versus Colorado Secretary of State and Deputy Secretary of State in their official capacities. Entries and advise of who is appearing on behalf of each side.

MR. FIELDER: Your Honor, thank you very much, Gary Fielder, 19757. I'm here on behalf of Colorado – excuse me, the Libertarian Party of Colorado and the Chairman, Hannah Goodman, is here and co-petitioner, James Riley, is also here at the petitioner's table. Thank you.

THE COURT: Thank you.

MS. MORRILL: Good after – afternoon, Your Honor. I am First Assistant Attorney General Leeann Morrill. With me at counsel's table is Senior Assistant Attorney General Emily Buckley as well as Assistant Attorney General Lily Nierenberg. In addition we have party respondent, Deputy Secretary of State, Chris Beall, at counsel's table and party representative for the Secretary of State's Office is Elliot Ravin, who is behind us in the – I think that's the bailiff's seat. Thank you, Your Honor.

THE COURT: All right, thank you. The matter is set today for a hearing in this case. The matter was filed on Friday, November 1st, and entitled, Verified Petition for Relief Pursuant to Colorado Revised Statute 1-1-113. The Court is in receipt of a hearing brief filed earlier today. Is petitioner ready to proceed?

MR. FIELDER: Yes, Your Honor, thank you.

THE COURT: And respondent?

MS. MORRILL: Yes, Your Honor.

THE COURT: All right, given the briefing that's taken place in this case and the number of witnesses that have been or will be called by the parties, the Court will allow each side one hour for examination, no recross as a matter of practice in this case so the party calling the witness will be allowed to direct, subject to cross examination by opposing counsel, and then redirect. If either party believes that it is absolutely necessary to have recross in this matter, the Court will consider it on a witness-by-witness basis. The Court will permit, in this case, the following three people to be

present during the proceedings in this case as an exception to the sequestration order, Clay Parikh, P-A-R-I-K-H, Ms. Rudy – Hillary Rudy, and I shouldn't have assumed her but Hillary Rudy and Ben Edelen. Those three parties will be allowed access by Webex. The Court should further note that it previously issued an order that Webex is restricted to witnesses. It is being gatekept by the Court to make sure that only authorized persons are present. That is without limitation to these proceedings being livestreamed for the general public. Mr. Fielder, do you wish an opening statement?

MR. FIELDER: Yes, Your Honor, just to make a brief opening statement because I know that I only have an hour.

THE COURT: All right.

MR. FIELDER: I think my pleading was pretty clear. Now, on the other hand, Your Honor, of course this is an expedited matter and I didn't know all of the facts. For example, it had been reported that these passwords were associated with 63 of the 64 counties. Pursuant to the brief that was filed by the Attorney General's Office, apparently the active passwords with regard to components that were still in operation were of 34 counties, which I still think is substantial and, of course, this matter is unprecedented. At least from our position it's extraordinary, thus requiring extraordinary and essentially unprecedented, meaning I can't find any precedent, for what's happened in this particular situation. Of course, we've only been using electronic voting devices for approximately 20 to 25 years. So – so before that, some of these problems didn't arise in our – in our more

distant case law. So, under the circumstances, we are asserting that a particular title in the Election Code was violated, 113.708 subsection 2 where any person, which would include more than an individual but also a government agency, published, because it's not just knowingly publish but it's cause to be published passwords or other confidential information relating to a voting system and we believe that we'll establish that today that that was done in however many counties they were. They weren't just inactive passwords but they were active passwords and they weren't up just for a day or so but we believe that the evidence will establish they were up for three or four months. Now there's other language in the statute which is somewhat unusual in the sense that in the Election Code, a person, again, meaning an individuals or a government agency such as the Secretary of State, not just in her official capacity, but the Office of the Secretary of State is a person under the law. That's our – that's our position. I don't think it requires conviction. Under 113 it gives the Court power to enforce election codes and if the Court were to issue an order that the Secretary of State desist from posting BIOS passwords, well that wouldn't cure the breach that's already occurred. And so in light of the language that states that any person that does publish this sort of information shall immediately have their access revoked, well I think that's in paly today. Now that might cause a major situation but, on the other hand, our position is that the Office of the Secretary of State was derelict in their duty to such a degree that the Court must act. Now I know that there's this issue of

certification. We're not really talking about certification. We're talking about the removal, the decommissioning, the nonuse of any devices that the subject BIOS passwords are connected to, which apparently is limited to 34 counties. We're not trying to create chaos, Your Honor, but these individuals, the party itself, and not just Mr. Riley but all of the candidates in the Libertarian Party and, of course, I would suggest the public in general and other candidates would be interested in a fair and accurate count, vote count. And so in that regard, we're asking for the Court to issue an order that any device that was subject to a live password not only be decommissioned but noting that our evidence should include proof that if one device has a password that could be accessible within a closed network then all of the devices in a county could be – could be affected and so if there's an analogy, it's the old one poisonous peanut in a jar of M&Ms, well, you're probably not going to eat any of those M&Ms. So there's some speculation here but, on the other hand, it's so close to the election and some of that is due to the Secretary of State. We plan on presenting evidence that they had this knowledge on Thursday, October 24th, 2024. It wasn't made public until Tuesday. Even by that time, technicians were travelling all over the state, apparently, in these 34 counties to change the password. We're going to present evidence that even that creates a problem. And so by the time we understood it as me, as a lawyer, the party itself, we started looking on the pleadings and really, as fast as I could type, couldn't get it filed till Friday. So I know that this – this is a problem but it's not two months ago, it's

tomorrow. So as difficult as it may be, we've outlined our relief in the – in the complaint. And we're not – we're not brilliant people, Your Honor. We're layman. I'm a layman. I'm a lawyer but I'm a layman. The individuals in the Colorado Secretary of State, they're the experts and I understand that. But, on the other hand, in light of the breach, we're asking for this relief because it just seems like the fair and just thing to do noting their constitutional responsibility, which we allege has been breached. Thank you very much, Your Honor. We're going to be – we're going to try to move as quickly as possible noting that hour, Your Honor, thank you.

THE COURT: All right, thank you.

MR. FIELDER: Thank you.

THE COURT: On behalf of respondents.

MR. FIELDER: Thank you.

MS. MORRILL: Thank you, Your Honor, and, before I begin, may I just ask for clarification? Is the Court's order for one hour per side for the total hearing of two hours or one hour per witness?

THE COURT: One hour per side.

MS. MORRILL: Per side. That was my understanding but I just wanted to make sure. I will endeavor to keep it brief. We appreciate the Court's attention to this serious issues, which I can assure the Court that no one takes more seriously than the Secretary and Deputy Secretary. That is, in fact, why they not only mobilized their entire Department staff with the assistance of the Governor of the State of Colorado to investigate, identify and re – and remediate the exposed

passwords, which I want to stress for the Court and for those observing and on the Webex are not obsolete. They have been changed for the machines and the components of the voting systems that were affected. We spent a great deal of time over this weekend and the early hours this morning trying to prepare a very detailed hearing brief for this Court's understanding of the issues that are involved and underpin this proceeding which, as the Court knows, is a highly expedited summary trial under the election code and is intended to provide a very specific set of relief and only that type of relief, namely substantial compliance with the provision of the Election Code. To be clear, our position is the Secretary of State, the Deputy Secretary of State, and, to our knowledge, the Office of the Secretary of State are all in strict compliance with the Election Code provisions and the rules promulgated by the Secretary of State as we stand here and are present here today. As a result, we do not think that there is any factual or legal basis for this Court to award the extraordinary and unprecedented relief that the petitioners seek from this Court. It cannot be overstated the chaos that decommissioning, which petitioner's counsel just clarified means and injunction ordering all 64 counties not to utilize any of their voting system components, what type of chaos that would sow in the conduct of the election, the general elections that tomorrow is election day, and that administration would be far from ordinary, regular, orderly, and secure. Instead, it would inject unknown procedures at the last minute that petitioners have essentially made up and asked the Court to order. We strongly believe that the

Election Code does not vest this Court with such broad, sweeping injunctive relief, but even backing up from that, a core concern of this entire proceeding, which was triggered by the filing of the verified petition is that, although the petition was, in fact, verified by Ms. Goodman and Mr. Wiley, it was based entirely on facts known to the public at large, in general, based on, again, publicly available information that has been reported on broadly. It is not, based on our review and assessment, based on personal knowledge of any individual, including Ms. Goodman and Ms. Wiley – Mr. Wiley, who have actually accessed the impacted voting system components or would have a reason to access them, much less investigated and tested those components to determine whether or not they have, in any way, been altered from their form before the BIOS passwords were changed. So our position is that this Court could, for one of the several reasons in the hearing brief, shortcut this hearing in its entirety and – and find that it lacks jurisdiction under 1-1-113 to afford the relief requested but, if the Court is going to allow the parties to make a record, we are prepared to proceed.

THE COURT: All right, the Court will allow the parties to make a record in this case. Before we call – have the first witness called, if I may have those who are here with a represented media outlet please raise your hand. For those of you who do not have your hands raised, all electronic devices shall be placed in a purse or pocket. Sir, would it be of assistance to you for us to close the blinds? I see some difficulty of folks in our gallery that might have the light of the

afternoon sun shining on them. Give us just a moment.

UNKNOWN MALE: Thank you, Your Honor.

THE COURT: It seems to be a little bit easier for everyone, now. All right, petitioner's first witness.

MR. FIELDER: Hannah Goodman. Does my hour start now?

THE COURT: Yes.

MR. FIELDER: Thank you. Hannah Goodman, please. Please take the – oh, right here.

THE COURT: Ms. Goodman, I'll be placing you under oath before you have a seat. If you would please raise your right hand? Do you solemnly swear or affirm, under the penalty of perjury, that the testimony you provide today will be the truth?

MS. GOODMAN: Yes.

THE COURT: Thank you. Once you're seated, that chair does move. If you would please be close to the microphone so that your testimony is made clear for the record. When you're ready.

MR. FIELDER: Thank you very much.

DIRECT EXAMINATION OF MS. HANNAH GOODMAN BY MR. FIELDER

Q Could you please state your full name and spell your last name?

A Hannah Lynn Goodman, G-O-O-D-M-A-N.

Q And you're over 18 years of age, is that correct?

A Yes, I am.

Q And where do you live?

A Holy Oak, Colorado in Phillips County.

Q How long have you lived in Colorado?

A Since 2015.

Q And you're the petitioner in this matter, at least in terms of the Chairman of the Board, is that correct?

A That is correct.

Q Of the Libertarian Party of Colorado, is that correct?

A Yes.

Q Is that a minor party recognized in the State of Colorado?

A It is.

Q And in terms of your petition, what capacity are you appearing in today?

A Well as a voter, first of all, second of all as a candidate on the ballot.

Q What – what type of candidacy?

A I am a candidate for Colorado's Congressional 4th District.

Q And is that the United States House of Representatives?

A That is.

Q And, just generally speaking, what counties are in the 4th District?

A It's all of the Eastern Corridor, so that's a lot of counties. That's Phillips, Sedgwick, Logan, Washington, Morgan, Yuma, I could – Prowers.

Q A lot of them?

A Kit Carson. Yeah, I could keep going.

Q All right.

A It also dips into a little bit of the Front Range out in Arapahoe and Douglas Counties as well as some of Loveland and I'm really iffy about the Fort Collins with the new district lines.

Q All right, and in terms of the Libertarian Party of Colorado, other than – than yourself and Mr. Wiley, are there other candidates statewide?

A Yes, there are. We're running 24 candidates, well 25 technically but one is non-partisan but we do count non-partisan numbers as non-partisan. So we have six congressional candidates on the federal level. We have eight Colorado Senate seat candidates, we have five Colorado House seat candidates, we have four County Commissioner races, we have one Board of Education and the non-partisan race is RTD.

Q And so those are in areas all across the state of Colorado?

A All across Colorado, yeah.

Q All right, thank you very much. And – and just for the limited time that we have, why did you – why did you participate in the filing of this petition?

A Because my candidates are known as what people would call spoilers so it's really important for our party to understand our dynamic within Colorado's political landscape. So it's incredibly important to track all of our vote numbers to determine, first of all, is that true and, second of all, what does that mean for third parties in Colorado and candidates getting elected. It's all a part of our candidate strategy as a third party and so it's really important that we make sure the numbers are very accurate and represent Colorado as a

whole because, yes, there are the two major parties but, like everything else, there's minorities and those minority numbers really need looked at, tracked at, and understood far better than we currently understand them.

Q Okay and associated with the – the passwords, which were on the website?

A Yes, so with that, I'm – I'm deeply concerned that we're not going to see accurate vote totals. It's going to deeply impact my candidate strategy as chairwoman of this party and it's a huge concern for anyone who is running on the ballot at this time, whether it's presidential or RTD, apparently.

MR. FIELDER: I understand. No further questions, thank you. Thank you.

THE COURT: All right, cross examination?

CROSS EXAMINATION OF MS. HANNAH GOODMAN BY MS. MORRILL

Q Thank you, Your Honor. Ms. Goodman, I heard you address the concern that led you to file this petition. Am I correct I did not hear you say that it was because you had actual evidence of unauthorized access to machines?

A No, I wouldn't as I'm not an elected official yet.

Q Okay, and – and that's great, I was going to ask you have you had any – you didn't say that was because you had personal knowledge of how these passwords could be used to impact the election?

A No.

Q Okay, and did you – were you also on the ballot earlier this

year?

A Yes, I was on the ballot for the special election to replace Congressman Ken Buck.

Q And the outcome of that election was, Ms. Goodman?

A For my vote total was just over 5 percent of the vote total. I don't know the actual number. Percentages are much easier to remember.

Q Okay and you did not win that election?

A No, I'm a – what you would call a minority and so therefore that's what we're looking at for swing votes.

MS. MORRILL: Okay, no further questions. thank you, Ms. Goodman.

MS. GOODMAN: Thank you.

THE COURT: Redirect?

MR. FIELDER: Nothing further. Thank you.

THE COURT: All right, may this witness be excused?

MS. GOODMAN: Thank you.

MR. FIELDER: Yes, Your Honor, if she could just remain at petitioners table. Thank you.

THE COURT: Thank you.

MR. FIELDER: We'll call Shawn Smith, Your Honor.

THE COURT: You'll be having a seat by me. Before you do have a seat, I will place you under oath. If you would raise your right hand? Do you solemnly swear or affirm, under the penalty of perjury, that the testimony you provide today will be the truth?

MR. SMITH: I do.

THE COURT: Thank you. Once you're seated, if you would make sure that you're close to the microphone for purposes of the record.

MR. SMITH: Yes ma'am.

THE COURT: Mr. Fielder?

MR. FIELDER: Your Honor, thank you very much.

DIRECT EXAMINATION OF MR. SHAWN SMITH BY MR. FIELDER

Q Gary Fielder – I'm sorry, could you please state your name for the record and spell your last name?

A Shawn Allen Smith, S-M-I-T-H.

Q And are you over 18?

A I am.

Q Where do you live?

A In Teller County, Colorado.

Q Teller County, Colorado. And, Mr. Smith, are you retired?

A In a matter of speaking. I'm retired from the Air Force.

Q I see, okay, and what do you do now?

A I work fulltime with Cause of America, a nonprofit that works on election integrity and trying to enable grassroots election integrity.

Q All right, now I would like to direct your attention back to October 23rd of 2024, which I think the Court could take judicial notice of is a Wednesday.

THE COURT: Any objection by the respondent to that?

MS. MORRILL: Your Honor, I object to Mr. Smith using his computer at the witness stand.

MR. FIELDER: Oh, he's not – we're going to do a demonstration.

THE COURT: All right, well any objection to the Court taking judicial notice under 201 of October 23rd, 2024 being a Wednesday as the day of the week?

MS. MORRILL: No, Your Honor.

THE COURT: All right, the Court, then, will take judicial notice, looking at its calendar in the program that October 23rd, 2024 was a Wednesday in this case and then before any type of electronic devices are used, we will go ahead and there's been an objection noted for that.

Q Yes, Your Honor, thank you. Mr. Smiht, do you remember that day?

A I do.

Q Is there something that happened that day that's relevant to our proceedings today?

A That was the last date on which I had downloaded a file from the Secretary of State site called Voting System Inventory, which is a listing of active certified voting system components in Colorado.

Q And why did you do that?

A I got a call or an email, I think, actually, from some citizens in Colorado that wanted me to look up some of their equipment, their voting system equipment and explain the configuration to them. I get – I get those kind of calls and emails all the time and I do that frequently.

Q Okay and is this something that you've done before?

A Thousands of times.

Q In terms of downloading the inventory list?

A Probably 30 to 40 times I've downloaded it.

Q Okay and is this something that's on the Secretary of State's website to advise the public of the – the types of equipment that's being used?

A Normally. I believe it's a statutory requirement that they maintain it publicly but it – it may be 18 C.R. 1505(1). I would have to go back and look.

Q And what sort of file did you download?

A On that date I downloaded, it was an Excel SX or an Excel spreadsheet file, like an Excel workbook.

Q Okay and did it have a file name?

A It did. It was, I think, Voting System Inventory.

Q All right and did you look at the file that day?

A I did.

Q Did you notice anything unusual that day?

A I did.

Q What was it?

A Well actually on the 23rd, I don't believe I did on the 23rd.

Q Okay.

A On the 24th is when I noticed something unusual.

Q Okay and what did you notice?

A Well I noticed that there were, for the first time, I had

been downloading that particular document over the course of the previous few months prior to, I think it was June, that document had always been in the format of an Adobe Acrobat document or a PDF document, portable document format.

Q Okay.

A And – but then beginning, I think the first copy I have of the Excel format was from August of 2024 and from then onward it was in an Excel format. I was annoyed because it was hard to – to search through compared to the Adobe document but – but on the 24th I noticed that there were hidden worksheets at the bottom of the page. You can – you can right click on the active, visible worksheet, which was inventory and then it will pop up and you can select "unhide," and it would pop up with a list of hidden worksheets.

Q Okay and what was on those worksheets?

A Well there were four of them and one of them was called clean formulas. Three of the four hidden worksheets had multiple columns, some of which overlapped with the inventory worksheet so they would include like the serial number or service tag number of the equipment component, the county to which it was assigned, the vendor name for the voting system that it was a part of. In some cases, under the remarks column, it would say that it was for a particular function like an image cast central scanner or something like that, whether or not it was active would be under an active volume and then there's a column on – on the clean formulas worksheet that said BIOS passwords.

Q Okay and, in terms of that particular file, if we were to

print it, how many pages would it be?

A 40 maybe.

Q I'm sorry?

A 40, roughly 40.

Q Okay and did you bring that file with you on a disk drive?

A I did.

Q And do you have that with you?

A I do.

MR. FIELDER: Okay, may I approach the witness, Your Honor?

THE COURT: Yes.

Q Thank you. I would like to mark – now does that thumb drive just have that file on it?

A No, it has a lot of other files on it but it will be easy enough to find. There's only one folder on the thumb drive.

Q Is it the – the thumb drive you used on Wednesday, October 23rd?

A No, I did not use a thumb drive. I downloaded it onto my desktop computer and then I make copies of the file and this is one of those copies. But you can look at the file properties of the file and see that the last time the file was saved was by an individual in the Secretary of State's Office named Edward Morgan on the 20th of June.

Q We'll get to that.

A Okay.

Q I just have to mark this as plaintiff's exhibit one. Now you may have to take that sticker off. I'm just marking it for the purposes

of identification.

A Okay.

Q So you said that you saw – now we're under some time constraints, which is totally fair, I'm just saying, you know, we need to move. What was the significance of discovering the BIOS passwords?

A Well they looked like complete BIOS passwords for those voting system components. Specifically the BIOS passwords would be for Windows base systems which is the Dell computers that are used in both Dominion Democracy Suite and the Clear Ballot Group Clear Voting Systems in Colorado.

Q And do you have any personal experience in your professional life in this regard with regard to computers, voting systems, and the like, cyber security?

A While I was on military active duty and then while I was working as a contractor for a year afterwards I had tremendous involvement with cybersecurity, in particular assessing threats and then oversight of defense systems that were undergoing operational testing to make sure that those threats were properly represented. And then after I retired I worked for about a year and did – helped an office under of the Office of the Secretary of Defense do an assessment of the – what had been taken and compromised by the exfiltration of data by foreign adversaries from U.S. national security establishment.

Q Okay, and so was it of concern to you that these BIOS passwords were available on the spreadsheet?

A Yes.

MS. MORRILL: Object to foundation.

MR. FIELDER: I think we've laid sufficient foundation that he's – that, as a fact witness, he can testify in this regard.

THE COURT: Approach please, bench.

The below statements were made during a bench conference while a white noise machine was active

THE COURT: All right, go ahead on behalf of the Attorney General.

MS. MORRILL: There's no foundation that he is an expert in anything Colorado voting related. He has had a couple of years' experience after leaving the – retiring from active duty. There's no underlaying foundation as to what his expertise in the BIOS – the BIOS passwords would be. There's a matter of expert and there's a matter of personal testimony. There's just absolutely no foundation there.

THE COURT: I'll allow you to lay additional foundation. The objection is sustained.

MR. FIELDER: Thank you.

The white noise machine is deactivated and bench conference ends

MR. FIELDER: Thank you, Mr. Smith-

THE COURT: One moment, please. The objection is sustained. And for those who have just joined, I'll just advise you because you may not have been here to hear initially, unless you're a member of the media, and those individuals have identified themselves previously as being members of the media, no electronic devices may be used. Please make sure that they are turned off and placed into a pocket or into some type of a purse. They may not be utilized. The sheriffs are here to

observe and make sure that that, amongst the remainder of the decorum order, is held in place. Additional foundation, Mr. Fielder?

Q Yes, thank you. Mr. Smith, what's your experience in computers and knowledge around the BIOS passwords, these Basic Input Output System passwords?

MS. MORRILL: Objection, leading.

THE COURT: Overruled, foundation.

A Well I wrote the first computer network defense procedures, operational level procedures for the Department of Defense when I was at U.S. Space Command. I've written code that's executed on weapon systems. I executed the conduct and planning for operational testing of weapon systems that were computer based weapon systems which would include specifications for testing of all of the defenses of those computer based weapon systems. I was the officer responsible for oversight in the Department of Defense of operational testing of all space weapon systems with the exception of satellite communications for about four years. I wrote the requirements for the specification of threat testing for space systems, including cyber defense. I helped specify the requirements and the design of the National Cyber Range for testing of defense weapon systems against cyber threats and then, in the course of those duties, I was exposed to pretty much every bit of U.S. intelligence on cyber threats against U.S. national security systems and was responsible to make sure those were properly represented in an operational testing environment. And then I helped develop and draft two reports in that project for advert – adversarial

assessment after I retired which went up to the Secretary of Defense and the President, which explained the vulnerabilities in U.S. Defense procurement and cyber specifications compared to the threat that those systems were experiencing. So I have a pretty broad and deep exposure to cyber threats against U.S. systems, against – about the operation of advanced persistent threat teams, the tactics they employ. I've supervised the operation of red teams that were penetrating U.S. weapon systems under test and assisted with the design of defenses for U.S. weapon systems. And then over the course of the last about three and a half to four years, I've been deeply engaged in looking at the technical data and specifications and design for U.S. voting systems. So I've read every single manual in the technical data packages for probably 30 different voting systems and then additional manuals beyond that. I have read all of the voting system standards, the voluntary voting system guidelines. I've read the test plans, I've read the test reports. I have bought the hardware components so that I could assemble my own sort of replica of one of the voting systems and then test out some of the software on it to see how it operated and then I use that to do testing of imaging of ballots so I could understand why the ballot images were the wrong size.

MR. FIELDER: Thank you. And, Your Honor, at this time I would move to allow Mr. Smith to testify as an expert in computers and electronic voting systems.

MS. MORRILL: We object and – and note that – we would like to voir dire the witness, please.

THE COURT: Go ahead.

MR. FIELDER: I'm sorry, can I inquire, Your Honor?

THE COURT: No, I'm going to allow the Attorney General to voir dire the witness as to qualifications. There's been an objection.

MR. FIELDER: Oh, does she want to voir dire?

THE COURT: Yes.

MR. FIELDER: Okay, yeah.

THE COURT: She does.

MR. FIELDER: Let me yield the podium, Your Honor.

THE COURT: Thank you.

MR. FIELDER: I lost my concentration for a minute. Sorry, thank you.

VOIR DIRE EXAMINATION OF MR. SHAWN SMITH BY MS. MORRILL

Q Do you have access to any voting system software currently in use?

A By voting system software, do you mean the proprietary software from the voting system vendors or the plethora of third party software like Windows operating systems, Adobe Acrobat, Libre Office?

Q The proprietary software?

A No, I do not.

Q Okay.

A Well – well, technically I do have access but I don't have it loaded. So, for example, the image from the election management system server in Mesa County, Colorado off of that voting system, I do have access to, I just haven't accessed it.

Q And did you consult that – you have never accessed it?

A That's correct.

Q Okay, so you have never looked at it?

A That's correct, not personally. I have looked at artifacts from it. I was the technical editor for all three of the forensic reports on the Mesa voting systems so I'm pretty familiar with the vulnerabilities of the system.

Q Have you ever testified on Colorado electromechanical voting systems previously?

A Electromechanically or computer based?

Q Electromechanical voting systems?

A No.

Q Okay.

A There are no electromechanical voting systems in use in Colorado. You have only computer based systems.

(Laughter from gallery)

Q Have you ever testified on the – as an expert on computer based voting system in Colorado?

A In Colorado, no, but the voting systems here are the same ones that are in use in the locations where I testified about those systems and their supply chain vulnerabilities.

Q Have you testified in other cases about other voter systems?

A Yes.

Q Which cases?

A There was a case in Alabama that I testified in and I was

asked to testify but then was not – we ran out of time but my sworn declaration was admitted in the – one of the Lake cases in federal court, not federal court, state court in Arizona.

Q Going back to the Alabama case, what was the subject of the case?

A It was a requested injunction against use of the voting systems.

Q Okay and what was your position and your declaration?

A I didn't have a position about it. I was called as an expert. My expertise in that particular case as well as in the Lake case was related to the unmitigated supply chain vulnerabilities for the voting systems because every single one of the computers had either been built entirely overseas of parts in China or parts from China with no supply chain security whatsoever from any U.S. agency or company. And because of my experience, my prior experience with the Department of Defense, what I understood in terms of the activities, for example, the Chinese Ministry of State Security and the advanced persistent threat teams that were in operation even as far back as 2012, I understood that that would expose those computers in our voting systems to vulnerabilities that could not be mitigated with any amount of effort and any amount of time.

Q What year was that testimony?

A I think it was 2021 in Lake and maybe 2022 in the case in Alabama.

Q Was – were you accepted as an expert by the Court?

A I was.

Q And what about the other case in Arizona?

A In the Lake case in Arizona, they accepted my declaration and I know it was challenged but I think the basis of the challenge wasn't on expertise, the basis of the challenge was some made up nonsense about a misinterpretation of comments that I made in a public speech.

Q What comments were those?

A Well I stated that I was, let's see, that I am for due process, that I am for justice, and that I believe that anyone involved in election fraud deserves to hang. And then the press, some of whom are in this room, misrepresented that comment. In fact, the Secretary of State herself misrepresented those comments as a threat, which, I mean, makes me wonder what her qualifications are as an attorney because what is a credible threat is pretty clearly defined in the law. But, anyway, so the media and several institutions continually misrepresented those comments as a threat or a call for something. In fact, I never even said that Ms. Griswold, herself, should hang. I just said anyone involved in election fraud, so I don't – maybe someone's guilty conscience got the best of them but – but what I didn't say was that someone should be hung. I clearly stated that there should be due process, much like there should be for this case.

Q So, to be clear, in the Arizona case, you were not accepted as an expert, is that correct?

A No, that's not what I said. I said I was accepted as an expert and we ran out of time. The case did not have enough time for

the hearing. It was Judge Tuchi, so.

Q Which case is the case where your comments about people who commit election fraud should hang? Which case is that?

A Well they weren't in the comments. They were part of the objection of the defendants to using me as an expert witness.

Q Okay, but the Court did accept your expert testimony?

A They accepted my explanation but there was no time for-. I think out of the four witnesses we had, only two were able to testify in the allotted time.

Q So the Court did not issue a ruling designating you as an expert in that case, correct?

A I have no idea but the Court did not, I guess, well I don't know what the right term is, uphold or agree with the motion from the plaintiffs to dismiss me as an expert.

Q Okay, have you testified in any other cases?

A Several, yes.

Q What other cases?

A There was a lawsuit here in the federal court. It was three non-governmental organizations, the League of Women – League of Women Voters Colorado; NAACP Colorado, Montana, Wyoming; and Mi Familia Vota Colorado being supported by an organization called Free Speech for People sued USEIP, United States Election Integrity Plan, which is a non-legal entity, and then three named individuals, Ash Epp, Holly Kasun, and myself, and accused us of violating the Voting Rights Act and KKK Act by attempting to intimidate minority voters through

canvassing and target minority voters.

Q Did that case involve Colorado voting system components?

A No, although there was some testimony about it. You know, several people on the stand, both on the plaintiff and on our defendant's side responded to some of those discussions about the status of voting systems.

Q Did you testify as an expert in that case?

A No, I was one of the defendants.

Q And what – what other cases have you testified in?

A Let's see, just related to voting systems?

Q You tell me. You tell me.

A Well I've been a witness for the defendant in a military court martial case, which was unrelated to voting systems.

Q You can skip that one.

A Okay and I'm sure I'm leaving some out. Do you only want court cases or do you also want sworn testimony before legislatures?

Q Only court cases.

A Okay, so I think that's it for voting systems.

Q Okay.

A Ah, I've been a witness in three civil cases related to property rights or property disputes in which, let's see, I was a plaintiff in all three.

Q Okay, I don't need to hear about those, thank you.

A Okay.

Q So, to your recollection, you have been admitted as an expert

once?

A I believe twice but I would have to – I didn't pay any attention to that. You know, it's like this, if they call me up then I come in and testify but I'm not reading all of the documents and, in fact, I can't even hear all of the things being said in the courtroom so – so I don't know, for sure, what exactly Judge Tuchi ruled but-

Q How many-

A - I understood that I was not dismissed as an expert witness.

Q How many times have you testified as an expert in a case in court like this?

A In court for voting or for election systems or for anything?

Q For voting or election systems?

A Well, voting related and election systems, this will make three.

Q And in how many of those cases have you been admitted as an expert by the court?

A Once, well twice. I'm sorry, counting this case or not counting this case?

Q You have not been admitted as an expert yet in this case, so.

A No, no, back to your – I'm sorry, back to your question about how many times I've been admitted or how many times I've testified. So I've testified, this will make three times that I've testified related to voting or election systems. I've been admitted for sure once and I think twice, I just didn't testify. They just used my sworn declaration in the Lake case.

Q I'm talking about testimony in court. So how many times have you testified as an expert in court?

A Twice counting this time.

Q You are not an expert yet so disregard today.

A I'm still an expert whether I've been admitted or not, ma'am.

(Laughter from the gallery)

THE COURT: All right, to those of you in the gallery, this is the third time that there has been an audible outburst. If there is one more comment, I'm hearing whispering from the farthest way away from the gallery. I am discounting the whispering. This is the third time there has been audible sounds related to either a comment or a question by either counsel or the witness. If there is any additional audible comments by anyone, the Court considers it to be a violation of the order. I have allowed three to go. If there is any more, there will be no one present in the gallery for the remainder of the proceedings. This is a place of respect and of dignity. I made that clear in my initial comments and I'm making it clear now after the third audible interruption of the examination. I will give people a moment now, if they wish and feel that they cannot contain themselves to exit now quietly. Otherwise, the courtroom will be cleared. You may continue with voir dire.

Q How many times have you testified as an expert in a court proceeding setting aside today?

A Once.

Q And, to your knowledge, that is the Alabama case?

A Correct.

Q What were you admitted as an expert on in that case?

A I don't recall but I can tell you what I testified about so I presume it was related to the testimony.

Q There's no need. You don't recall what you were admitted as an expert on?

A Well it was related to the voting system and the supply chain security so, again, I've studied the architecture, the components. I've researched the components, I've researched the companies, I've researched the company that performs the auditing on the components, I've researched the risk limiting audit, I've researched the people involved in developing the risk limiting audit, the software developers, the security companies, the engineers, their background.

Q Okay.

A I've done an extensive amount of research and my background prepared me to review technical documentation and to understand both the architecture, the operation, and the vulnerabilities of the systems.

Q Have you published any articles?

A Articles, no, I have – I have published some reports so, for example, although that wasn't about voting systems. I have, other than my sworn declarations in both Arizona and the – and the Alabama cases and then I've written some legislature that has then gone on to be incorporated or enacted in several states with respect to technical requirements for voting systems.

Q Have you published any papers on voting systems?

A You mean like academic papers?

Q Correct.

A No, I'm not an academic.

MS. MORRILL: No further questions. The Secretary continues to object to him being designated – Mr. Smith being designated as a witness.

THE COURT: The Court will overrule that objection. Mr. Smith is received as an expert pursuant to 702 by this Court in the area of voting system components, electronic voting system components.

DIRECT EXAMINATION OF MR. SHAWN SMITH BY MR. FIELDER

Q Yes, thank you. And we were talking about Thursday when you noticed that there was some spreadsheets with the BIOS passwords. What does BIOS mean?

A BIOS is the basic input/output system. It's technically firmware. It runs off non-volatile memory on the motherboard and it's a set of instructions that effectively tell an operating system loaded onto that computer how to interact with the hardware of that computer. So it has very foundational control over the configuration and behavior of that computer.

Q And what's the significance in terms of this particular issue?

A Well, the compromise of a BIOS password would allow someone to either replace the BIOS or to permute or alter the BIOS so that, for example, if someone who didn't have access to – to edit the BIOS but

had access to review it, for example, to look to see whether a wireless networking card was on or off or disabled or enabled, someone could – someone could configure that BIOS to display false status to that individual. It would also allow them to do things like change the boot sequence which would be which – which memory or storage device the computer looked to for an operating system when it powered on. And if you can change the boot sequence then you can force the computer to boot or start up from a different operating system that would allow you to do things like override or replace passwords within the operating system or create or add users or add software or change configuration of memory devices. There's an immense, I won't say infinite but it's a stochastically immense number of different attack vectors that are enabled by access to a BIOS password.

Q And is it part of the security of a – a system to keep BIOS passwords secure?

A Yes.

Q And if those BIOS passwords are known to a person or a hacker or foreign government, can these systems be – can our voting systems here in Colorado be accessed?

A Yes.

Q Now does the person that's trying to access the voting system with the BIOS password need to be present at the computer?

A It depends on the configuration of the system. So if there are software agents that are operating on the system or that are operating on removable drives then those can access and take advantage

of the BIOS passwords, potentially. If any of the devices that have a compromised BIOS password or other devices to which those devices are connected have any kind of external networking device whatsoever then they absorb or adopt the vulnerabilities of every other component on that network, including the switches themselves.

Q And when you say network, are you talking about the different components that exist in a county?

A Correct. They're not always all networked by, like a LAN cable, like a wire. Sometimes they're networked wirelessly but sometimes they are network by LAN cables. Like Dominion Voting Systems in Colorado, the election management system servers are typically connected to the image cast central scanners with a LAN cable that's connected through, typically, a switch.

Q Can the wireless apparatus of a component be toggled on so that wireless is capable of a component?

A Yes, in fact, that's a particular specified attack technique that MITRE's ATT&CK database list that adversaries will use software to trigger or to schedule enabling of wireless components. This is why in the Department of Defense Security Technical Implementation guides they do not allow wireless networking devices whatsoever within areas that are processing, you know, very confidential or secret information. If it's a very secure facility, they don't allow them at all because administrative disablement is not effective and it has been bypassed repeatedly by advanced persistent threat teams.

Q Now do the components that were on the inventory list and the

other components that are used statewide, are those capable of a wireless interaction?

A Some are. So I've only verified 15 out of the 64 counties so far but so far I'm up to 15 counties that still have wireless networking components right now and a year ago it was – it was far greater than that before they started replacing the hardware on the dominion systems. So I think Douglas and Garfield still have wireless networking components, Pueblo does, Jefferson does, Boulder does.

Q Okay, pretty big counties?

A Yes.

Q Now these wireless components are turned off in the – in the BIOS, right?

A That's what I'm told.

Q But if you had the BIOS password, you could turn them on?

A You could.

Q Now what if an expert that was changing the BIOS password, what if they noticed that it was turned off and they didn't need to think about it? What does that mean?

A Unless they're really an expert and unless they have cyberfriendship credentials and have been able to exam all of the – examine all of the artifacts on that system to determine whether it has been the subject of a compromised or unauthorized access or alteration, which would be pretty time consuming. I mean, my back of the napkin estimate, based on what I've seen with red teams on defense systems is you would need a very good team and several days to be able to clear a

single component. So I don't think that they would necessarily notice whether that system had been altered to show some false status to them. So the fact that the BIOS settings said a wireless component was disabled or enables is sort of immaterial because not only could that be false but it could be toggled back on by any of a variety of means. At any – at any time there could be, you know, various criteria that toggle that wireless network connection on.

Q What did you do on Thursday, October 24th when you realized that some of these BIOS passwords had been released through the website on this excel spreadsheet?

A Well I started analyzing to see which counties were affected. So I compared the active inventory worksheet and the serial numbers on it to the serial numbers on the clean formulas worksheet, which seemed to be the most complete BIOS password listing to see which hardware components, by serial number or service tag number, were still in use according to the Secretary of State's inventory.

Q Okay and how many of the – how many of the components were still in use?

A I think my count was 664.

Q 664 statewide?

A That's correct.

Q Of components that were still in use in the State of Colorado?

A Correct.

Q For which the BIOS passwords which were revealed are

associated with those components?

A That's correct.

Q How many counties?

A Well there were BIOS passwords listed for 63 of 64 counties. Las Animas County was not – did not include any hardware with BIOS passwords but not all of those 63 counties had hardware with BIOS passwords listed that was still listed on the active inventory sheet. I have still not been through all of the counties but I know for sure that at least 11 of the state's 13 largest counties by population have hardware components with BIOS passwords listed that, according to the inventory sheet, are still in use.

Q And what did you do after Thursday upon making this discovery?

A Well I was contacted by an attorney, John Case, who asked me to prepare an affidavit to the extent that I had, you know, how I had downloaded, accessed, what I had found and, you know, and what information was in there, what I just described in terms of the number of counties and components.

MR. FIELDER: May I approach, Your Honor?

THE COURT: Yes.

Q I would like to show you what's been marked as – it's called plaintiff's but petitioner's exhibit number two. Is that a copy of the affidavit?

A Yes sir.

Q And what did you do with that affidavit after you prepared

it?

A Well a notary met me and we notarized it and I scanned it and sent it to Mr. Case.

Q Okay and what happened to that – that affidavit thereafter?

A I don't know what the path was. I know that on Tuesday morning or Tuesday there was a press release, I think from the Colorado GOP – the Colorado GOP, from the Republican Party from the chair, Dave Williams, about his letter to the Secretary of State and I believe it attached or they forwarded a copy of the affidavit.

Q And was the affidavit redacted in any way?

A It was.

Q How was it redacted when it was publicly released to the GOP?

A Both my name and the notary's name are redacted.

Q Why?

A Because of the pattern of targeting and persecution by the Secretary of State. You know, notaries, their livelihood and their certification of notaries is under the control of the Secretary of State and the Secretary of State has demonstrated, you know, a pattern of targeting. There were individuals within the Secretary of State's Office that forwarded my personal information to the general counsel of Dominion Voting Systems. The Secretary of State has designated observers continually to Elbert County after the clerk there made a backup of their voting system data and – and, despite having continual reports that there's nothing going wrong in Elbert, they continue to target them. The – the Secretary of State has, you know, targeted them

in the press, targeted Clerk Peters and Mesa in the press. There's a pattern of conduct.

Q So you didn't want to reveal your name?

A I – I thought it would be better at the beginning. I figured it would come out eventually but I was more concerned about the notary, honestly. At this point, you know, the Secretary of State's Office know who I am.

(Sneeze from member of gallery)

MR. SMITH: Bless you.

Q And then you received a subpoena from me, is that right?

A That's correct.

Q To testify here today with regard to that affidavit?

A That's correct.

Q All right, and so once the revelation was made on Tuesday, and that would be October 31st of 2024, that was made through the media, is that correct?

THE COURT: If I may receive clarification? You said Tuesday, October 31st and I believe that Thursday was October 31st. Tuesday was October 29th. If I may just, for purposes of the record, clarify the day and the date.

MR. FIELDER; Yeah, the Tuesday after that 23rd/24th. The Tuesday is October 29th, is that correct?

A Correct.

Q Okay, all right. So thereafter did you start working on what you believe the significance of the release of those BIOS passwords is?

A Well I had already started making notes. You know, the – the people that I was talking to were – a lot of people had called me and most of the people who called me did not know that I was the affiant on the affidavit and so I just answered just as I would have if I had – if I had not been the affidavit – the affiant. So I explained to them what could be done with the BIOS passwords, what I understood about what was in the spreadsheet. I wasn't, I don't think, by any means the only person who had downloaded the workbook from the Secretary of State site. So a lot of other people had it but not everybody would have spent as much time as I have spent going through the equipment and I have looked up thousands of pieces of equipment from those inventory worksheets.

MR. FIELDER: May I approach, Your Honor?

THE COURT: Yes.

MR. FIELDER: I want to show you what I've marked as plaintiff's – petitioner's exhibit number three and, counsel, do you have that – a copy of that?

MS. MORRILL: Counsel, I would appreciate – you did give me a binder but I would appreciate it if you would also show. It's in the binder?

MR. FIELDER: Yeah, and I've got a copy if you need it. Not everything made the binder but I have a copy if you need it.

MS. MORRILL: That did not make this binder.

MR. FIELDER: Here it is.

MS. MORRILL: Thank you.

Q Thank you, and, Mr. Smith, is this a copy of your declaration with regard to your opinion as to the significance of the disclosure of the BIOS passwords?

A It is.

Q And can you summarize that, please, noting the time that we have?

A It – the compromise of the BIOS passwords for voting systems and computers, given their configuration and what we know about the vulnerabilities of the supply chain for these computers, the fact that the computers are not monitored by any kind of cybersecurity professional or any kind of cyber defender with any sort of tools to detect intrusion or permutation of them, all of that adds up to incredibly severe vulnerability and risk of compromise, unauthorized access, and permutation of these systems.

Q And is it also explained in your declaration with regard to the number and types of disclosures that were made on the website through these BIOS passwords?

MS. MORRILL: Objection, leading.

THE COURT: Sustained.

A I'm not sure if you're asking me-

THE COURT: Sustained. The question-

MR. FIELDER: Yeah, hold on.

THE COURT: - the answer – you're not permitted to answer. Mr. Fielder can ask another question but the question that he asked, the objection is sustained.

Q Yes, thank you. Thank you. Does your declaration outline your thoughts with regard to this particular situation?

A Well it doesn't – it doesn't cover the numbers of systems, necessary. It doesn't repeat the ground of the original affidavit. What instead it talks about is some of the vulnerabilities in the configuration that I have – that I have observed in researching the individual configurations and the components listed in the inventory, many of which also appear on the clean formulas worksheet and have BIOS passwords listed for them. So – so, for example, talking about the nexus of vulnerability created by having a voting system component with a BIOS password compromise which also is equipped by the vendor with a wireless networking card in it despite those not being authorized for use in Colorado and despite those wireless networking capabilities not being tested in any way for any purpose by the voting system testing lab as they describe in their own report.

Q All right, so what's the primary threat of this particular issue of the BIOS passwords being released on a – on a public website?

A Well, in the first place, most people outside of sort of defense circles or really deep in cyberworld don't understand this but foreign adversaries are scanning all IP addresses. Like China scans every single IP address in the world every day looking for changes and if they find changes then they immediately divert resources to switch from surveillance to reconnaissance to look to see what's changed on that site. So, from my background with my experience and what I was exposed to from an intelligence perspective, I have no doubt that the

moment a file is posted on the Secretary of State site related to voting system equipment, there is an advanced persistent threat team or an organization underneath the Chinese Ministry of State Security that is aware of that, is downloading that, and hands that over or turns that over to researchers and engineers to determine whether there's exploitable information in it. So – so that's just one. There are also any number of criminal organizations, amateur hackers, advanced persistent threat teams in other countries like North Korea, Iran, etcetera, and all of them are looking for U.S. government and state government information. In fact, the federal government, FBI and CISA, confirmed that Iran was targeting and – and had penetrated U.S. critical infrastructure, including election-related infrastructure. So we know they're targeting. So the possibility of those voting system BIOS passwords were not almost immediately picked up by those foreign intelligence services and foreign actors, to me, is zero. And so the risk then becomes those actors, in the case of the People's Republic of China, they built, in China, much of the computer components and some of the entire systems, like all of the laptops that are used in Dominion and Clear Ballot Voting Systems in Colorado were built entirely in China, not just of Chinese components. So they built them, they know if there are backdoors and now they have the BIOS passwords which were supposed to keep the wireless technology secure and other settings secure. Those systems are fair game, I think, for those agencies.

MR. FIELDER: All right, Your Honor, at this time I would move for

the admission of petitioner's exhibits one, two, and three. Now one, we may have to put on another disk because there's other – there could be other things on that disk but I'm sure we could arrange that. The Excel spreadsheet on exhibit one, which came from the website, the affidavit, which was written on the – the 24th, and my client's declaration as an expert witness, Your Honor. Thank you.

MS. MORRILL: Your Honor, we object. I have not received a copy of exhibit one from counsel.

THE COURT: And as to exhibit two?

MS. MORRILL: As to exhibit two and exhibit three, there's no objection.

THE COURT: The Court will receive exhibit two and exhibit three as exhibit one is currently tendered, the Court will not accept exhibit one. Cross examination?

CROSS EXAMINATION OF MR. SHAWN SMITH BY MS. MORRILL

Q You have no personal knowledge that any specific voting system component has been accessed by an unauthorized person?

A That's correct.

MS. MORRILL: No further questions.

THE COURT: Redirect?

MR. FIELDER: No, thank you.

THE COURT: All right, may this witness be excused?

MR. FIELDER: Yes, Your Honor. Thank you.

THE COURT: All right, thank you, you are excused. If you would leave those exhibits there, please, those are the Court's exhibits.

Thank you. All three of them.

MR. SMITH: This also?

THE COURT: Yes please. Thank you.

MR. FIELDER: He can stay in the courtroom, can't he?

THE COURT: Any objection to the witness, now that testimony is complete, remaining in the courtroom?

MS. MORRILL: No, Your Honor.

THE COURT: All right, you're welcome to remain in the gallery. Thank you. Petitioner's next witness?

MR. Fiedler: Clay Parikh, please. He's on the Webex.

THE COURT: And will the individual be turning – there we go. Thank you. Good afternoon, this is Judge Gerdes.

MR. PARIKH: Good afternoon.

THE COURT: If you would please raise your right hand while I place you under oath? Do you solemnly swear or affirm, under the penalty of perjury, that the testimony you provide today will be the truth?

MR. PARIKH: I do.

THE COURT: Thank you, and you may put your hand down again. Thank you. Mr. Fielder?

DIRECT EXAMINATION OF MR. CLAY PARIKH BY MR. FIELDER

Q Could you please state your full name and spell your last name, please?

A My name is Clay Boudet Parikh, that's P-A-R-I-K-H.

Q And where are you at right now?

A I'm in Huntsville, Alabama.

Q How old are you?

A I'm 61.

Q 61, and what do you do for a living?

A I'm a cybersecurity professional.

Q And could you advise the Court of your background, please?

A I've been a cybersecurity professional now for two decades. I have a Master's Degree in Cybersecurity. My undergrad degree is in computer science. In that time I've held all of the top certifications. I've been a certified information systems security professional for 17 years. I've been a certified ethical hacker, which was a job requirement, and I've also been a certified hacking forensic investigator and I – during this time, as part of my side work, I worked in the voting system test labs, two of them, for over a nine year timespan.

Q And have you been recognized as an expert in voting systems in other courts in the United States?

A Yes, I have.

Q Could you describe that, please?

A I was considered a voting system expert in the federal court in Arizona with Ms. Lake's case, in her court case at the state level in her case, and Pennsylvania, even though that hearing was dismissed, and then also in Alabama.

Q Okay and have you prepared a declaration in this regard?

A Yes sir, I have.

Q And have you outlined your qualifications in your

declaration?

A Yes sir, I have.

Q What's your – your educational background?

A I pretty much covered that, sir. I have a master's of science in cybersecurity based on the (inaudible), correct.

Q All right, and have you reviewed certain documents in preparation of your testimony today?

A Yes, I have.

MR. FIELDER: All right, and we can get into that next but I would like to move for the recognition of this witness to be an expert in the field of cybersecurity and voting systems, Your Honor.

THE COURT: Response by the respondent?

MS. MORRILL: Thank you, Your Honor. Voir dire, please?

THE COURT: Yes.

MS. MORRILL: Thank you.

VOIR DIRE EXAMINATION OF MR. CLAY PARIKH BY MS. MORRILL

Q Good afternoon, Mr. Parikh. If I heard you correctly, you reside in Alabama, sir?

A Yes, I do.

Q So you're not currently a registered elector in the State of Colorado?

A No, I'm not.

Q You're not currently an employee or contractor of any Colorado County Clerk's Office?

A No, I'm not.

Q And you never have been?

A Never.

Q You're also not currently an employee or contractor of the Secretary of State's Office in Colorado?

A No, I'm not.

Q And you never have been?

A Never have been.

Q You're familiar, sir, with Dominion Voting Systems?

A I'm very familiar with Dominion Voting Systems.

Q And you're also familiar with Clear Ballot Voting Systems?

A Yeah, fairly familiar. Not as familiar as with Dominion or ESNS or Unison.

Q And you understand that Dominion Voting Systems and Clear Ballot Voting Systems are two voting systems that are used in Colorado state and federal elections?

A Yes, I am.

Q You're not currently an employee or contractor of Dominion Voting Systems?

A No, I'm not.

Q You're not currently a contractor or employee of Clear Ballot Voting Systems?

A No, I'm not.

Q And you have never been an employee or contractor of either of those two voting system companies, is that correct?

A That is correct.

Q Sir, you were employed by the Federal Election Assistance Commission, is that accurate?

A No, that is not accurate.

Q Were you a contractor?

A I was-

Q Oh, I'm sorry, go ahead.

A I was staffed through a professional contracting company with the voting system test labs, which do the certification. I have physically met with EAC on two occasions.

Q Thank you for that clarification. So you were a contractor for the, and I'm sorry, the Election Assistance Commission testing labs?

A That is correct.

Q Okay and you ceased serving as a contractor to the EAC in 2017, is that right?

A Yes, my last work was with Pro V&V in 2017.

Q And you testified that you're a certified ethical hacker?

A Yes, I held that for 15 years. I recently gave that certification up because I plan on retiring at the beginning of next year.

Q And am I correct that you signed a declaration in connection with your proposed testimony here today that is dated November 3rd, 2024?

A That is correct.

Q And that you are – am I correct that you are here to offer

opinions concerning the security of electronic voting systems used in Colorado?

A I'm here to give expert technical opinion on that, yes ma'am. I'm one of those advanced persistent threat teams that Mr. Smith talked about.

Q Thank you, sir. Before coming here today – before testifying here today and before signing your declaration, did you have the opportunity to hack into the Dominion Voting System as it is used in any Colorado county?

A Yes.

Q And when did that occur?

A I hacked into the Mesa County image which I turned into a virtual machine. I've hacked plenty of the same versions in the voting system test labs.

Q And, sir, you're referring to the Mesa County image from which clerk – former Clerk and Recorder Tina Peters was recently convicted of inappropriate creating that image?

A If the Court would have allowed my testimony and not considered it irrelevant on that subject, she was wrongly convicted in my professional opinion upon reading the Colorado electoral laws and the Secretary of State election rules.

Q I understand that may be your opinion, sir, but my question is was the hard drive image that you attempted to hack the one that Ms. Peters was accused of improperly taking of the Mesa County voting system?

A One, I hacked the Mesa County image and removed the password – the operating system password and accessed the election database based off of that. Two-

Q And that image was provided to you, sir, by Tina Peters?

A - she was not – may I finish answering?

Q Well, I don't think you're actually answering my question, so.

A Two, she was not convicted.

Q If you could focus on my question? Maybe I'll ask a better one. Have you ever hacked, ethically, any voting system in current use by a Colorado county that was in the custody of the county Clerk and Recorder?

A No.

Q Before testifying here today, and preparing your declaration in support of your testimony, were you ever granted physical access to any Colorado electronic voting system that is currently in use today?

A No.

MS. MORRILL: Your Honor, at this point, the Secretary would object to Mr. Parikh being accepted as an expert witness. We don't dispute his general qualifications, knowledge, and training around ethical having an election – electronic voting systems from a general standpoint, but we do, however, fail to – see that he has failed to provide adequate foundation for Colorado's current electronic voting systems that are in use today. He has not attempted to ethically hack those or otherwise been granted any access to them and therefore his opinions, while based

on other specialized knowledge of other systems not at issue in this proceeding, will not help this Court determine a fact that is at issue in this proceeding.

THE COURT: Response, Mr. Fielder?

MR. FIELDER: Your Honor, I think the Court would be aided by his testimony. This gentleman has years and years of experience and much of his background is in his declaration, which I'll be moving for admission, but I think he's qualified to testify with regard to the impact that the release of the BIOS password may have had, not just may but substantially could have head, plus some of the remedies that might be available like having a new trusted build or just updating the password, things that have either already been done or have been suggested by others that we do in remedy of this situation. All of it is described in this declaration, Your Honor.

THE COURT: All right, the Court is going to decline to admit this witness as an expert pursuant to Rule 702 in the field offered of electronic voting systems based upon no personal knowledge as it relates to current Colorado systems. If you wish to inquire of the witness as a fact witness, you're welcome to do so.

MR. FIELDER: Could – could I ask that he be qualified as an expert witness in the field of cybersecurity, Your Honor, and be able to opine about the passwords in that regard, Your Honor?

THE COURT: Ms. Morrill?

MR. FIELDER: I think that that's more of what his expertise is, thank you.

MS. MORRILL: Your Honor-. I'm sorry, I didn't mean to speak over you, sir. Your Honor, we would object to such testimony on the grounds that it's duplicative of Mr. Smith's testimony related generally to cybersecurity and defense systems. Additionally, general – again, while we don't doubt Mr. Parikh's lengthy experience and – and qualifications, what is at issue in this proceeding here today are the Colorado electronic voting systems that are currently being used in the election that the State is running as we speak and, again, to the standard under C.R.E. 702, we just do not believe that his testimony in that regard will bear on a fact at issue in this case because he, again, lacks foundation sufficient to offer opinions about these present day, currently utilized, systems.

THE COURT: Response?

MR. FIELDER: Can I be allowed to further question, please?

THE COURT: You may.

MR. FIELDER: Thank you.

DIRECT EXAMINATION OF MR. CLAY PARIKH BY MR. FIELDER

Q Sir, do you have knowledge of the present systems that are used in the state of Colorado, the voting systems that are used in Colorado?

A Yes sir, I do, and I've got to be honest, I'm a little confused how I was accepted as an expert witness in the Colorado court in Grand Junction but not here and if I'm allowed to explain about software development and the images used on these systems, I can – I was asked a question as if I had physically, ethically hacked the ones

that are currently used. That references to hardware. While I have not touched the hardware, I have touched those system versions that are currently used in Colorado and their vulnerabilities apply the same across the board.

MR. FIELDER: And so I would renew my request. I think the Court would be aided by the assistance of an expert in cybersecurity and particularly these systems that are used in Colorado because we are generally talking about the release of BIOS passwords and the impact that that may have on the reliable and security of these systems, Your Honor, as part of our case, Your Honor.

THE COURT: Ms. Morrill?

MS. MORRILL: Thank you, Your Honor. I would like to continue voir dire of Mr. Parikh based on his response to counsel's most recent question.

THE COURT: That's fine.

VOIR DIRE EXAMINATION OF MR. CLAY PARIKH BY MS. MORRILL

Q Mr. Parikh, am I understanding you correctly to testify under oath here today that before coming to testify, before signing your declaration in connection with this proceeding, that you have not ethically hacked or had physical access to any Colorado voting system component in terms of hardware that is presently in use in the general election today?

A Yes ma'am, that's correct but it's irrelevant.

MS. MORRILL: Thank you. That will be for the Court to determine, sir.

MR. PARIKH: No, I-

Q My next question is, before testifying here today and signing your declaration, did you have – did you ever attempt to ethically hack a Colorado voting system component software that is currently in use on a voting system in a county today?

A Yes.

Q Are you referring to the hard drive image of the Mesa County voting system?

A Yes.

Q And-

A No. I mean, I've forensically looked at other components.

Q What other components?

A I – I can't, of the top of my head remember that as I'm in the witness stand and I can't reference anything according to court rule, if I'm not mistaken, but I've looked at – I've currently looked at stuff within over 28 states in different types of voting systems.

Q Well, sir, we're not focused on other states. We're focused on Colorado so-

A Yes ma'am, and I'm just trying to reply to your – I'm trying to reply to your question because, off the top of my head, I can't remember those exact components – software components.

Q Okay, well every question that I'm asking you here today is related to the Dominion or Clear Ballot Voting Systems that are currently in use by Colorado counties in conducting the general election today. So have you ethically hacked the software in any

Colorado county that is currently being used for either of those two voting systems today?

A I have not. However, I am well aware of the way Dominion controls its software versions.

Q Thank you, sir. You have answered my question. I understand you to say that you have not. Did I hear you correctly?

A Yes, you heard me correctly.

MS. MORRILL: Thank you. Your Honor, I would renew the Secretary's objection. This witness lacks foundation and does not meet the high standard under Rule 702 to qualify with scientific specialized knowledge of any fact that is actually in issue here today.

THE COURT: Response?

MR. FIELDER: And, Your Honor, we spent a lot of time trying to get everything ready in an expedited matter and this gentleman is an expert with regard to the Dominion Voting Systems, the ones that are used here in Colorado. We're speaking about the release of these BIOS passwords, the threat that that could cause. This gentleman is an expert in cybersecurity, voting systems, he used to work for the company that certifies the instruments in Colorado, so I – I think that he's more than qualified to talk about the potential and real threat of the release of these passwords and he's reviewed documents in that regard and he's made a declaration, which I would like to enter into an exhibit. I think, for sure, he's an expert in these matters, Your Honor, and he could assist the Court in its final determination.

THE COURT: And as to the duplicative or cumulative nature given

the witness – the last witness's testimony?

MR. FIELDER: Well my client, excuse me, Mr. Parikh has a different approach to it and the – and his testimony is a little more detailed because I was using Mr. Smith not only as an expert but also the fact witness that discovered the items and had the – and downloaded the items and, of course, he's an expert so he opined on it but I think the real substance of our case comes from Clay Parikh, Your Honor, and I would really indulge the Court to – ask the Court to allow us to question this witness, Your Honor. It's very important for our case.

THE COURT: And the Court will permit the questioning of the witness, however, not an expert pursuant to 702 based upon the lack of personal knowledge as it relates to the State of Colorado's current systems in place. You may inquire as a non-expert.

DIRECT EXAMINATION OF MR. CLAY PARIKH BY MR. FIELDER

Q Sir, are you able to speak on the seriousness of the security violation of the release of these BIOS passwords?

A Yes sir, I am.

Q And what's the level of security violation of the release of these passwords?

MS. MORRILL: Objection, foundation based on lack of access or knowledge about the voting systems in use today.

THE COURT: Sustained.

Q Now were you made aware of the existence of the spreadsheet that Mr. Smith was able to obtain on the Secretary of State website?

A Yes, I was.

Q And were you-

A I-

Q Go ahead.

A I obtained three copies from Mr. Smith on the 25th of October. He asked me to store those in a secure place so they would be taken care of and he would talk to me about it afterwards.

Q All right, and – and in terms of reviewing those spreadsheets, did you notice that there were BIOS passwords on the spreadsheet?

A Yes, I did.

Q And what-

A In two of the hidden tables there was a column called BIOS password and it had complete, full BIOS passwords for the systems.

Q Okay, now back to some of the previous questioning, when – did you analyze some software in the Mesa County situation?

MS. MORRILL: Objection, relevance.

THE COURT: Sustained.

Q All right, well let's go back to the spreadsheet. What did the spreadsheet reveal?

A The spreadsheet revealed the complete BIOS passwords for over 600 components of the voting system.

Q And what's the – what's the significance of that?

A The significance is it doesn't matter if it's a voting system, a healthcare system, or a weapons system, all of which I've ethically hacked in my career, the – the BIOS password is the first

lawyer of security to ensure that the system can't be compromised, that it maintains its integrity and boots straight up into the hard drive so only those that authorize the counts can access them.

Q And what type of things can the BIOS input/output system do if you have the password?

A It – with the password, you can change – you can enable wireless, you can allow the machine to do virtualization, you can control the boot order. With that password, you can basically put malware on the BIOS itself without touching the system to avoid detection by the operating system, which is the main component that all of the voting system applications run on. There are literally a thousand things you could do to this system to go undetected.

Q And so you could enable the wireless capacity of a particular component?

A I could – I could enable the wireless, turn it on, and turn it off when I wanted to.

Q So that if, later, it was checked and it was turned off, would that mean anything?

MS. MORRILL: Objection, leading.

THE COURT: Sustained.

Q What about checking it to see that the wireless was turned off?

A I could manipulate – with the BIOS password, I could manipulate the BIOS and make you think that it was turned on and enabled. You cannot trust the BIOS after that. More importantly, simply

changing the BIOS password does nothing because the BIOS reports all of its log events in what's called CMOS. If you log in with the BIOS password, that event is not recorded. If you change the BIOS password, that event's recorded. So you have no way of detecting via the logs on the actual firmware, the system, of whether it was accessed or not.

Q And what about the release of the plain text passwords within the database that was released?

A That is a serious violation. The first steps that should be done are professional forensic teams like FireEye or somebody that does this for the Department of Defense or federal agencies to analyze those components. I concur with Mr. Smith's estimates – estimates on it and, furthermore, I will tell you that they would probably still tell you they can't one hundred percent, conclusively tell you it wasn't. In the Department of Defense, that means the hardware goes through a big shredder machine and is destroyed. That's the way the Department of Defense handles it.

Q Should-

A So the estimation – it's – to find it is too – too much time. Secondly, changing the password only – is irrelevant at this point. Four months was my estimation and confirmed by a second person I was made aware of by an attorney that actually accessed the file. I was only a day off in my estimation. From late June to October 24th when Ms. Griswold admitted that the passwords were removed, a four-month time period was plenty of time for those passwords to be used and violate

the systems.

Q And were those partial passwords that were published on the website?

A They are full passwords and those are the only – that would be the only password that would matter because, as in the case of plenty of voting systems, to include the Mesa image, I removed the EMS admin password and entered the system without a password. Then I entered the election database, again, without a password, and that's all because the BIOS was compromised.

Q Okay, and should the component to which the BIOS passwords were revealed be used in the election?

A No, they should not.

MS. MORRILL: Objection, foundation.

THE COURT: Sustained.

Q What about a new trusted build? Would that work to remedy the situation?

MS. MORRILL: Same objection, foundation.

THE COURT: Sustained.

MR. PARIKH: Ma'am, may I speak that I'm very aware-

Q No, no, you can't. No, the objection has been sustained. So, in terms of the passwords that were released, how long did you say they had been – they had been in the public website?

A According to the evidence and the data I have from files downloaded and my estimation of the metadata of those files, just a little bit over four months.

Q Okay, all right. And does changing the passwords, does that remedy the threat in the BIOS situation?

A No, it does not.

Q The reveal of the passwords?

MS. MORRILL: Objection, foundation.

MR. FIELDER: Your Honor, I think I've laid a sufficient foundation for this witness to testify with regard to what I believe will be established was done in the 34 counties based upon my knowledge and reading of the pleadings. We're working under 72 hours, Your Honor.

THE COURT: And I will allow you to rephrase the question. The question, as posed, is sustained. You may rephrase the question in consideration of the record you've just made.

Q Okay, and so the question was – and I'm sorry, I've lost my train of thought. I'm frustrated. If I could have just a moment, please? We were talking about the passwords and their use and we were talking about changing the passwords. Do you understand that the passwords in the components to which the BIOS passwords were revealed, do you understand that the passwords of those have now been changed?

A Yes.

Q And does that mean that the component is now safe?

MS. MORRILL: Objection, foundation. Calls for expert testimony.

THE COURT: Sustained.

Q Does that-

MR. PARIKH: Your Honor, may I ask you a question, ma'am?

Q No, you can't. So, in terms of – if a password is changed,

does that mean that-. Well, I'll put it this way. Are there logs that allow a – a computer technician to determine whether or not a computer or a component has been accessed?

A Not when it's concerning the BIOS password.

Q I'm sorry?

A Not when it's concerning the BIOS password because the BIOS does not log the event of if the password is correctly used.

Q I see, okay.

A So in the case of any information system, which we are talking one of the components was an EMS, an election management server, which resides on a Dell system, which is a computer that anyone could buy. That computer, which is part of this system, the BIOS, if it's accessed that is not recorded if the BIOS password is properly entered. So with the password being available and it's entered then it would be – actions could be taken and a technician could not quickly establish whether it was accessed or not or what was done and, according to the EAC regulations, which I'm very familiar with-

MS. MORRILL: Objection, the witness is veering into legal opinion if these are federal legal regulations that he's about to testify about.

THE COURT: I'll allow you to ask the next question, Mr. Fielder.

Q Thank you. Now, would release of these BIOS passwords, would that be a security breach?

A A serious security breach.

Q And why-

A And that's even according to the Colorado Secretary of State's Office.

Q Okay and would it be a violation of election protocol?

A Yes, it would.

Q And is there a possibility of compromising the voting system in Colorado?

A There's a very high likelihood. If we took this into risk analysis and assessment, yes. The time period, given the variance and the different sizes of the counties involved, the vulnerability of the overall system, which I have submitted the declaration to the U.S. Supreme Court on how bad the Dominion portion of those systems are, I didn't – haven't submitted anything on Clear Ballot but, yes, that likelihood would be extremely high, and also based off the intelligence portion that Mr. Smith testified on about how China and other adversaries, to include criminal activity, scan the networks and internet.

MR. FIEDLER: Thank you. No further questions. Thank you.

THE COURT: Cross examination?

MS. MORRILL: None, Your Honor.

THE COURT: May this witness be excused?

MR. FIELDER: Yes, Your Honor. Thank you.

THE COURT: This will be a perfect opportunity for all cell phone and electronic devices to be silenced, please.

MR. FIELDER: Can we take a short break? I would like to – how much time do I have left?

THE COURT: If you'll give me one moment to calculate? Seven minutes.

MR. FIELDER: Can we take a short break?

THE COURT: The Court will be in recess until four p.m.

MR. FIELDER: Thank you, Your Honor.

THE COURT: May I see counsel at sidebar for a bench, please?

The below statements were made during a bench conference while a white noise machine was active

THE COURT: I just want to advise the parties that a gentleman in the gallery asked the deputy to hand a legal piece of paper to petitioner's counsel, which was done, and so I just wanted the parties to be aware of that fact. If it's a person who is appropriately part and party of this, that's fine. Otherwise, that is not the sheriff's responsibility to be a courier so I will have it not happen again.

MR. FIELDER: Understood.

MS. MORRILL: Thank you, Your Honor.

MR. FIELDER: Thank you.

The white noise machine is deactivated and bench conference ends

The Court recesses from 3:51:52 p.m. until 4:03:00 p.m. FTR recording time

THE COURT: Counsel, if I could see you at sidebar before we recommence in a moment?

The below statements were made during a bench conference while a white noise machine was active

THE COURT: So I'm going to go without interruption. So you have

seven minutes left, then respondent's case, and five minutes for closing each side. Thank you.

MS. MORRILL: Thank you.

The white noise machine is deactivated and bench conference ends

THE COURT: The Court is recalling 24CV33363. Counsel are present. For those who are in the gallery, please be advised that if you depart, as I indicated before the proceeding commenced, or as at the initial outset of the instructions, you will be exiting for the remainder of the time. I have advised both counsel that after the plaintiff's case, respondent will have their opportunity to present evidence. The Court will then go into brief closing arguments. Each side will receive five minutes. And so the Court will now go until conclusion of the case. Your next – your next witness, Mr. Fielder?

MR. FIELDER: Thank you, Christopher Beall. Thank you.

THE COURT: Good afternoon, if you would raise your right hand? Do you solemnly swear or affirm, under the penalty of perjury, that the testimony you provide today will be the truth?

MR. BEALL: I do.

THE COURT: Thank you. Once you're seated, if you would please make sure that you are near the microphone for purposes of the record.

DIRECT EXAMINATION OF MR. CHRISTOPHER BEALL BY MR. FIELDER

Q Thank you very much. Could you please state your full name and spell your last name, please?

A Christopher Perry Beall, B as in boy, E-A-L-L.

Q And what's your profession?

A I am an attorney and I currently serve as the Deputy Secretary of State for the State of Colorado.

Q Fair to say that you're the number two person in the office?

A It is fair to say.

Q Underneath the elected Secretary of State Gena Griswold?

A Jena Griswold.

Q Jena Griswold.

A Yes.

Q Thank you and, in that regard, you make the final decisions with regard to agency decision making, is that fair?

A I make decisions. I am the final agency decision maker on categories of decisions, for example, campaign finance, lobbyists. I make other decisions as the designee of the Secretary.

Q And you've been present throughout the length of the trial, is that correct?

A Yes.

Q As one of the respondents at respondent's table, is that correct?

A That's correct.

Q So you know what we're talking about?

A I do.

Q We're talking about the BIOS passwords which were on a spreadsheet on the website of the Secretary of State, is that correct?

A That is what the case is about. I don't actually have accessed to and have never seen the spreadsheet that you're describing.

I have no personal knowledge of that spreadsheet.

Q Do you dispute that certain BIOS passwords, over 600 of them were made available on the Secretary of State's website?

A I don't dispute that.

Q And, in that regard, is it fair to say that that was a security breach, is that fair?

A It's fair to say it shouldn't have happened. It's fair to say that it was contrary to our policies, practices, and rules. It is also fair to say that I wish it hadn't happened. I would not, however, call it a security breach.

Q Well you've heard the witnesses that the respondent has put on the evidence, is that correct?

A I've heard that.

Q And meaning that, with the BIOS password, individuals with access to these particular components could change the operational system of a voting system in Colorado, is that correct?

A I have heard them say that. Their statements are incorrect.

Q Okay, well you're not an expert in that regard, is that fair to say?

A I'm an expert in our voting systems structure in Colorado and I am an expert in the layers of security that are required by our rules and our practices and there is, fundamentally, no way that a password discourteously be exploited in our scenario.

Q How long were the passwords available on the website?

A I do not have direct personal knowledge but for the benefit

of the Court and I understand that the passwords – the spreadsheet with the passwords in it was uploaded to our website on June 21st and it was taken down from our website on October 24th.

Q And on October 24th did the – did your office start to take steps to change the password and the affected components?

A Our office took steps immediately to notify appropriate people, including the – the vendors, as well as the federal cybersecurity agency and we began to assess whether the passwords were live, whether the competes were still in use. We began to evaluate what the potential was for exploitation of the passwords. We were in the process of assessing how to deal with it when the – I now understand Colonel Smith's affidavit was released by the State GOP.

Q Okay and then, at that time, you had a meeting with the county clerks on Tuesday of – October 29th, is that right?

A I have had several meetings. I believe, yes.

Q And at that time, were a team of 20 or more technicians sent across the state to change the passwords in those components?

A Teams were sent out. I believe you are referring to the teams that went out on Thursday, October 31st. On October 29th, we already had staff in the field conducting regular visits to counties and for, I'm not going to – I believe a handful of counties where the passwords were still active, we had those passwords changed on that Tuesday, October 29. We had another handful of passwords changed on October 30th and then on October 31st we had the remainder of the – we assessed 34 counties that had active passwords and machinery that is still in use in those

34 counties. I understand that the spreadsheet identifies 63 counties but many of those counties, 29, did not have active passwords on voting system equipment that is in active use.

Q Would you agree that the passwords were published?

A I would agree that they were on our website and I would agree that our staff had to have put them there. The word publish, in my mind, includes an intent to make publicity, an intent to publicize, and intent to disseminate to the world and, so far as I'm aware, there was no publication of those passwords. There was a disclosure that should not have happened but I don't agree that they were published.

MS. FIELDER: And may I approach the witness, Your Honor?

THE COURT: Yes.

Q I would like to show you what I've marked as petitioner's exhibit five, nine, ten, and 11, and I think those have all been given to the Attorney General. Is petitioner's exhibit five the order that you signed allowing the Secretary of State to change the password and have access to those components?

A It is the temporary adoption of Election Rule 20.5.2(c)(12) that authorizes the Secretary to designate staff or others who have met security background checks to change passwords.

Q And by Secretary of State, you mean the actual elected official, is that correct?

A No, the Secretary of State is a term of art within our rules. It means the office.

Q The office, so the office itself is a person, would you agree

with me on that?

A Well now you're engaging in legal argument. That's – we actually have debates about whether the Secretary of State is, as the office is a person.

Q Isn't person described as a governmental subdivision, agency, or instrumentality as the government?

A In some places in statutes it is, yes.

MR. FIELDER: Okay, so I would move for the admission of petitioner's exhibit five, please.

MS. MORRILL: No objection, Your Honor.

THE COURT: Exhibit five is received.

Q Thank you. And, in terms of the other three exhibits that I've placed before you, are those orders that were made by the Secretary of State in association with a previous incident of, among other things, the release of BIOS passwords in Mesa County?

A I would disagree that the exhibit ten and exhibit 11 concern a release of BIOS passwords. Exhibit ten is Election Order 2021-02 dated August 12, 2021, and exhibit 11 is Election Order 2021-03, dated August 17, 2021. However, with regard to exhibit nine, which is Election Order 2021-01, August 9, 2021, I agree.

Q And ten and 11, were those associated with some of the actions that the Secretary of State took with regard to the companies that were in Mesa County that were subject to the misbehavior there?

A Yes.

Q And in exhibit number 11, is that also action that the

Secretary of State took in terms of the – the – well, hold on. I may have them mixed up here. Is nine, is that 2021-01?

A Yes, it is.

Q And you would agree that that was with regard to the access to BIOS passwords?

A No. I wrote this document.

Q Okay.

A And this document was the order that the Secretary issued upon learning of the publication on a website, a video clip that showed what were identified as BIOS passwords to the Mesa machinery. This order requires the clerk to provide information and documents and to make her office and equipment available for an inspection by the Secretary's staff to confirm whether or not there had been any tampering or exploitation of the security system – of the soft – the voting system.

Q So number nine is 2021-01?

A That's what I have.

Q And that's the one you just referenced?

A It is.

Q And so that was done as a part of the investigation in that particular circumstance?

A What is that? That was done. I'm sorry, I didn't understand your question.

Q So this particular order, that was in response to a situation in Mesa County as described in the document?

A Yes.

Q And 2021-02, is that also an order which was executed by the Office of the Secretary of State outlining certain devices that were compromised through the – the misbehavior that was in Mesa County or whatever happened there?

A Election Order 2021-02, dated August 12, 2021 is the Secretary's Order prohibiting Mesa County Clerk and Recorder's Office from using voting system components that are listed in the order in light of the operative facts that the Secretary recites, primarily the absence of compensating controls that would assure that the machinery had not been accessed or tampered with, in particular the absence of video surveillance and the absence of chain of custody records around these components.

Q And has that been done with regard to the components that were associated with the BIOS passwords that were on the website? Meaning was there an investigation, has the video been checked, has there been a determination as to whether or not any of those components were accessed?

A We are in the process of investigating. We're talking about thousands of hours of video. We have required the counties to provide to us the access logs of their key card entries. We have – when our teams went out to inspect and change the password, we required the creation of a hash value to compare. We also required inspection of the seal logs and inspection of the access logs in order to ascertain whether there was any indication of any tampering. To date, I have

received no information from any of the teams that went out that there was any anomalies encountered during the visits.

Q And is 2021-03, is that – is that in exhibit 11?

A It is.

Q Did I mark that correctly?

A Yes.

Q Is that an order decommissioning the components that were part of the Mesa County voting system?

A No, I believe you're thinking of 2021-02 and it wasn't to decommission, it was merely to prohibit from use.

MR. FIELDER: Prohibit from use, okay, all right. So, at this time, Your Honor, I would move for the admission of petitioner's exhibit nine, ten, and 11.

THE COURT: Response?

MS. MORRILL: No objection.

THE COURT: Exhibits nine, ten, and 11 are received.

MR. FIELDER: Am I out of time, Your Honor?

THE COURT: You are.

MR. FIELDER: Thank you. Thank you for your patience. Thank you.

THE COURT: All right, I do need to allow this witness, however, to be cross examined.

MR. FIELDER: Yeah, yeah.

THE COURT: And so I will allow redirect for that purpose.

MR. FIELDER: That would be great: thank you.

THE COURT: And then petitioner's case will be concluded. Cross

examination, Ms. Morrill.

MS. MORRILL: Thank you, Your Honor.

CROSS EXAMINATION OF MR. CHRISTOPHER BEALL BY MS. MORRILL

Q Good afternoon, Deputy Secretary Beall.

A Good afternoon.

Q For just the sake of time, I might just refer to you as Mr. Beall.

A That would be perfect.

Q Counsel asked you a series of questions about election orders issued by the Secretary of State's Office in 2021, is that right?

A Yes.

Q In 2021, at the time the order issued in exhibit – in petitioner's exhibit nine was entered, was – what was the first step or, I'm sorry, the first step that the Secretary ordered as part of 2021-01 was to require the Clerk and Recorder of Mesa County to allow access for and update the BIOS passwords, is that right?

A That is right.

Q And is that the same first step that the Office took with respect to the BIOS passwords at issue here?

A It is.

Q And in that same order, was the second step allowing inspection of systems and security protocols for the Mesa County voting system?

A It is.

Q And is that what I just heard you describe to the Court that

the Secretary's Office is currently in the process of investigation with respect to the BIOS passwords and their related components here?

A Yes.

Q And do I unreason that that is a lengthy process?

A Very.

Q And do I also understand correctly that in 2021, none of the additional layers of security that you referenced around 24/7 video surveillance of the secure voting system equipment was required by Colorado law?

A It was not required.

Q And, in fact, is it fair to say that because there was no video surveillance or other-. I should also ask you before I ask this question, in 2021, was there a requirement that County Clerks record log access, badge swipe log access to their voting system equipment?

A There was not a requirement. However, in Mesa County, over the objection of the Clerk, Mesa County Administrator provided our office with the key card logs for Mesa County Clerk's Office which revealed the presence of unauthorized people within the secure area.

Q And, Mr. Beall, was it the combination of the badge access logs that revealed the presence of an unauthorized individual who had accessed Mesa County's – Mesa County's voting system components coupled with the lack of 24/7 video surveillance that directly caused the Secretary or that she considered and led to her to ultimately decommission Mesa County's voting system equipment in her subsequent orders, those that are exhibits ten and 11?

A I'm going to give you a yes but I'm going to disagree with decommission. She prohibited the use of the equipment.

Q Thank you. And what is the difference?

A The difference is that decommissioning would require the disassembly and the, as I think one prior witness said, grinding it up into scrap and prohibiting use allows for the opportunity to conduct a new trusted build, to do testing on the equipment and to recertify the machine.

Q And so is it fair to say that the security protocols in place in 2021, when the Mesa County security breach was discovered by the Secretary's Office were substantially different and less than those that are currently in place today?

A Substantially different and less than what is currently in place as a result of what happened in Mesa.

Q Does – am I understanding you correctly that the Secretary's Office took action after the Mesa County security breach to strengthen security protocols around electronic voting systems?

A Exactly.

Q And did she do that through promulgating administrative rules?

A Through promulgation of rules.

Q And what else?

A Through pursuing and recommending and lobbying with legislators for the enactment of additional legislation, and for promulgating acceptable use policy retirements for all individuals who

have access to a voting system equipment that establishes further protocols around security.

Q Is it fair to say, Mr. Beall, that security of Colorado's electronic voting systems is a paramount concern of Sescretary Griswold?

A It is a paramount concern, not only to Secretary Griswold, but to every employee within the Department.

Q And this is my, I hope, last question about the events of 2021 in Mesa County. Mr. Beall, am I correct that, at the time, that security breach was first discovered by the Secretary's Office that Mesa County was not in the process of running a statewide or federal election?

A That is correct.

Q I would like to turn now to the Secretary's hearing brief and your own hearing brief. It's actually titled Respondent's Hearing Brief in this proceeding. Are you familiar with that document, Mr. Beall?

A I am.

Q Okay, have you reviewed it personally?

A Yes.

Q And did you, in fact, review it personally before it was filed with the Court?

A Very much so. About several times yesterday, this morning, yes.

Q And are you familiar, in particular, with the factual background portion of the respondent's hearing brief?

A I'm very familiar.

Q And as you sit here under oath today, would you – do you agree that all of the information contained in the factual background of the Secretary, I'm sorry, respondent's hearing brief in this proceeding is accurate based on your knowledge and information that's available to you today?

A I do.

MS. MORRILL: May I have one moment, Your Honor?

THE COURT: Yes.

MS. MORRILL: No further questions. Thank you.

THE COURT: Redirect?

MR. FIELDER: Thank you.

REDIRECT EXAMINATION OF MR. CHRISTOPHER BEALL BY MR. FIELDER

Q Mr. Beall, thank you. Can you state that no unauthorized person has accessed these voting systems, the passwords to which were revealed in the state of Colorado?

A I – I have no information that any unauthorized person has accessed the voting systems. I also have no information indicating that someone has accessed, improperly, the voting systems. We are currently in the process of evaluating that.

Q I understand and I think you answered those questions in the same way but the answer – my question was can you state that no unauthorized person has accessed the component to which the BIOS passwords were released? Can you state that they haven't done it?

A Well you're asking me to assert a negative and the answer is

I cannot.

Q And authorized people can also access these components, is that correct?

A Yes.

Q And, in fact, in the Mesa County matter, some of the individuals involved were authorized to access the information, is that correct?

A Not the individuals who made the copies of the hard drives but certainly Clerk Peters had authorized access herself at that particular moment.

Q And there's the term inside threat. An inside threat would be someone that is authorized but, nonetheless, accesses parts of components that shouldn't be accessed, like the BIOS, is that correct?

A That is.

Q And these technicians that went through the State, did they work for the Secretary of State?

A Nine of them did, well actually more than nine. I think – don't hold me to the numbers. There were 22 engineers from the Governor's Office of Information Technology, OIT, who visited, again, don't hold me to the number, I think it's nine counties but, in any event, 22 from OIT and the remainder from the Secretary of State's Office.

Q And in the response brief that was filed that you said you went over, are you familiar with a footnote that indicates that 34 counties were affected?

A I am.

Q And what's the meaning of that footnote in terms of how many counties and the devices that passwords were changed in?

A What I'm aware of is on the basis of the review that our team has done, there were 46 counties that, in the disclosed spreadsheet, had passwords exposed where it was conceivable that there was still machinery from that password list. However, 12 of those counties we subsequently determined did not have the machinery that was on the disclosed password list in use. Their hard drives had been pulled out. So that left, out of 46, 34 counties across the whole state and so, yes.

Q That had computers in their voting systems to which at least some of these BIO passwords – BIOS passwords were revealed, is that correct?

A That's correct. The – the documents or the investigation that our team has been working on has – that we sent teams out to work on these machines listed 255 pieces of machinery in 34 counties. I'm sorry, yes, 255 pieces of machinery in 34 counties, all of which have had BIOS passwords changed as well as physical inspection of their – their current state.

Q Of the BIOS?

A Of the BIOS settings, but also of the seals on the machines, the hardware connections, the – the logs into the secure room, all of the inspection.

Q So are you saying that the logs were reviewed to determine

access to the computer?

A I'm saying that the logs have been – we've obtained many and we're still getting more logs but we're looking for – we're getting the key card entry logs as well as the paper logs.

Q And would you admit that, for example, when you power up a computer by punching F1, you can use the BIOS password to get into an operating system?

A Would I admit that? I don't want to go there. I'm not sure.

Q Okay, all right. Significant that these BIOS passwords were released, is that fair?

A No question that it is significant.

Q All right, and in terms of the 34 counties, if asked, could you provide a list of the counties that were affected?

A If asked I could provide a list. I have been reluctant to say the names of the counties in public for many of the reasons that others have identified.

Q And you could understand why the public is concerned about this, confidence in our voting system?

A Oh absolutely I understand. I also believe that the concern, while substantial for many people, is addressed by the hard work and the structures that have been in place throughout this time and the dedication of the county staff who work with and around these machines and who have absolutely no desire or incentive to compromise their machines.

Q I understand that. However, there was the release of these

passwords, is that right?

A That's true.

Q On the website of the Secretary of State, right?

A That's true.

Q Unauthorized, right?

A That's true.

Q And the passwords were full passwords, not partials?

A They were full BIOS passwords. They were not all of the passwords needed to get into the operating system of the equipment.

Q The clerk keeps those as sort of the user password, is that fair?

A That is fair.

Q Like you would get into your computer at your home, maybe you're a user but not the administrator, is that fair?

A That is fair.

Q But maybe your wife is the administration and you need that additional passcode?

A Yes.

MR. FIELDER: All right, thank you very much. No further questions, Your Honor.

THE COURT: All right, you may return to your seat. Thank you. Respondent's first witness?

MS. MORRILL: Thank you, Your Honor. Respondents call Hillary Rudy.

THE COURT: Good afternoon. Do you solemnly swear or affirm, under the penalty of perjury, that the testimony you'll provide today will be

the truth?

MS. RUDY: I do.

THE COURT: Thank you. Once you're seated, if you could please make sure that you're close to the microphone?

DIRECT EXAMINATION OF MS. HILLARY RUDY BY MS. MORRILL

Q Good evening, Ms. Rudy. Can you please state your position?

A Yes, I'm the Deputy Elections Director for the State of Colorado.

Q And how long have you held that position?

A Since 2013.

Q Can you give me a general description of your duties in that role?

A Yes, I oversee the teams within the division that are responsible for working directly with the counties to support them, train them, and ensure that they're following the laws and rules as they conduct elections.

Q What did you do before you were in that position?

A Before I was in that position, I was a Senior Legal – Legal Analyst and Policy Analyst.

Q Okay, at what timeframe did you have that role as the Senior Analyst?

A That was from around 2008 until 2013.

Q Okay, so you've worked for the Secretary of State's Office awhile, the Colorado Secretary of State?

A Yes, I have.

Q Okay, it's not always been Jena Griswold?

A No, I've worked as a full time staffer for six Secretaries.

Q Okay, I won't ask you to name them all right now. When did you first begin working in the Office of the Secretary of State in Colorado?

A I began as a fulltime staffer in 2006.

MS. MORRILL: May I approach?

THE COURT: Yes.

Q Ms. Rudy, I've handed you a document. Could you please take a look at it for a minute? Do you recognize that document?

A I do.

Q What is it?

A It's my CV.

Q And how do you know?

A I prepared it and wrote it.

Q And feel free to take a look. Does it have current information on it?

A It does.

MS. MORRILL: Okay, I would move to admit this and I believe we are on defendant's exhibit one.

THE COURT: Any objection?

MR. FIELDER: Is it the CV? Is it her CV? Yeah, no objection. Thank you.

THE COURT: Exhibit one is received.

Q All right, I'm going to direct you to the second page of your

CV, Ms. Rudy. In the top it says, "professional affiliations and memberships." Do you see that?

A I do.

Q Are those current?

A Yes.

Q Okay-

THE COURT: And I'm going to actually – just for purposes of the record, I'm going to make this exhibit A just so it's distinguished. We've used numbers for the petitioner so we're going to use letters for the respondent. Thank you, exhibit A is received.

Q Understood, thank you, Your Honor. Ms. Rudy, you were saying that your affiliations and memberships on this document are current, correct?

A They are.

Q Okay, just taking – let's take the one that's been going for the longest, the National Association of Election Officials. Can you just generally describe your involvement with that?

A Yes, the National Association is an association of election officials from across the country. I've been a member since 2011 and I maintain a current continuing education certificate through the Association and am involved in the Association.

Q Okay, thank you. And then if you look to the next section under "Education," on the top it says that you have education with the Election Center and you are a certified elections/registration administrator, correct?

A Correct.

Q What does that mean to be a certified elections/registration administrator?

A That's the certificate of continuing education that I maintain through the National Association.

Q Okay, thank you. And on the next line, it notes that you are a Colorado certified election official. Same question, what does that mean?

A That means that I've obtained – obtained and I maintain my certification through the Continuing Election Official Certification – Certification Program through the Secretary of State's Office.

Q Okay, and what is your highest level of education, Ms. Rudy?

A I have a law degree.

Q When did you obtain that?

A In 2006.

Q Okay, so you have been working for the Secretary of State's Office basically since you became a lawyer?

A That's correct.

Q Have you worked in election administration the whole time you've been with the Secretary's Office?

A I have, yes.

Q Do you supervise employees?

A I do.

Q How many?

A I believe I direct supervisor five or six employees,

currently.

Q Okay and have you provided any type of testimony in court before in your capacity as an employee of the Secretary of State's Office?

A I have.

Q And have you supplied testimony as an expert who has been qualified by the judge as an expert in your capacity?

A I have.

Q How many times?

A Twice.

Q And approximately how many additional times have you provided testimony in your capacity as an employee of the Secretary of State's Office?

A I don't have an exact number but I've provided testimony a number of times over my career.

MS. MORRILL: Okay, at this time I would move to qualify Hillary Rudy as an expert in the administration of elections, particularly in Colorado.

MR. FIELDER: Can I voir dire?

THE COURT: Yes.

MR. FIELDER: Thank you.

VOIR DIRE EXAMINATION OF MS. HILLARY RUDY BY MR. FIELDER

Q Thank you very much. And, in terms of the anticipated testimony, the Attorney General has moved to recognize you as an expert in election administration, is that correct?

MS. MORRILL: Administration of elections, particularly in Colorado.

Q Election administration, is that correct?

MS. MORRILL: Yes.

MR. FIELDER: No, I'm asking her. Is that correct, election administration?

A Yes, she said election administration including in Colorado.

Q Yeah, election administration. And so, in that regard, you might be asked to opine about certain things. What would you be talking about in terms of election administration? Would you talk about the technical aspect of these BIOS passwords or what part would you be testifying on?

MS. MORRILL: Objection, foundation and speculation.

MR. FIELDER: I just would like to know.

THE COURT: I'm going to sustain that objection. We're dealing with qualifications now in the voir dire stage. So you are welcome to ask those questions during your cross examination but this is focused on qualifications for voir dire.

MR. FIELDER: And I just don't know what she's going to be – I don't know what an expert in election administration is other than – than the votes and the counting of the votes and the laws but, you know, I guess we'll hear what she has to say.

THE COURT: Well that was actually a question that the witness can answer. What does the administration of elections entail?

Q Thank you very much, Your Honor. What is – what is your

expertise, this administration of elections, what is it about?

A I've worked in the Secretary of State's Office in a number of capacities and I currently oversee the teams that support the counties in conducting state and federal elections. That includes everything from the registration of voters to the canvass of votes at the end of an election.

MR. FIELDER: I see. Okay, no – no further questions and no objection. Thank you.

THE COURT: This witness will then be received, pursuant to Rule 702, as an expert in the area of the administration of elections, including Colorado.

MS. MORRILL: Thank you, Your Honor.

DIRECT EXAMINATION OF MS. HILLARY RUDY BY MS. MORRILL

Q Ms. Rudy, do you recognizes the term logic and accuracy test?

A I do.

Q What is that?

A A logic and accuracy test is conducted in every county before they begin scanning ballots for an election. It's basically a pre-audit of the election to ensure that the way that the ballots are printed ensures that they will scan and tabulate properly during an election. It's a public process and the political parties, the two major political parties are invited to provide representatives to participate.

Q Was – when was that last conducted statewide in Colorado?

A It was conducted – I don't recall the exact date but it was

conducted ahead of early voting for this election.

Q And by this election you mean the 2024 General Election?

A That's correct.

Q Okay, following the – and let me just clarify, that is – is that something that is performed just as a, you know, single county or does that go across the state?

A Every county is required to perform that test before they begin scanning their ballots for an election.

Q All right. Now, following the logic and accuracy test which you didn't recall exactly when that happened, are there other measures taken to make sure that the election is secure in Colorado?

A Yes, in fact, there are measures taken even before that. The election begins in Colorado with the certification of ballot content, which is then used to create the ballots and there kind of begins a chain of custody at that point. So the County Clerk is following how many ballots are issued throughout the election, ensuring that eligible electors receive all of the content on their ballot that they are eligible to vote on and that's why the logic and accuracy test is important to ensure that ballots tabulate properly. Throughout the election, they're also required to maintain a strict chain of custody, and outside the election, they're required to maintain strict chain of custody on certified voting equipment that they are using in the election. They antipain a strict chain of custody on voted ballots. There's 24/7 video surveillance of secure equipment rooms, ballot drop boxes. Equipment is sealed with tamper-evident seals and a chain of

custody logs from the time that a trusted build is put on the equipment through – through the time that it is given a new trusted build for an upgrade or a replacement.

Q All right, you said a lot there so I want to touch on a couple of those things. So when you were saying that they are required to maintain a strict chain of custody, who are you referring to?

A I'm referring to the County Clerks and their staff.

Q Okay, and why are they important?

A Well they're important because the County Clerks and their staff in each county conduct the election and so, in each county, the county election officials are the ones who need to maintain a chain of custody, tabulate the ballots, and ultimately certify each county's election.

Q Okay, and as part of this chain of custody you mentioned or as part of the security measures, I should say, you mentioned 24 hour video surveillance, is that correct?

A Correct.

Q Where is that?

A There's 24 hour video surveillance required of all secure equipment rooms. Those are the rooms where voting systems are stored, where tabulation systems are maintained. Larger counties are also required to have 24 hour video surveillance in their secure ballot rooms and we have 24 hour video surveillance at drop boxes.

Q Okay, thank you. And then you mentioned something about equipment being sealed?

A Correct.

Q Can you describe that?

A At the time a trusted build is put on voting equipment, it's sealed and a chain of custody has begun. So the – the tamper evident seals ensure that if someone attempts to manipulate or tamper with the equipment visibly, that that is discovered because of the placement of the seal. So it leaves a residue if it's removed.

Q Okay, now if something is, you know, sealed physically, that may not impact whether somebody can get in through the internet.

A Actually, all voting system equipment cannot be connected to the internet. So voting systems are maintained separate and apart from – they're air gapped from the internet and they are not maintained on the county network.

Q Okay, and you said they can't be connected to the internet?

A It is prohibited that they be connected to the internet.

Q Okay and – and so are you saying that, in Colorado, the voting machines are not connected to the internet?

A That is correct.

Q Do you know whether somebody would need physical access to a machine to be able to connect it back to the internet?

A They would, yes.

Q Okay. Now you also mentioned something about logs?

A Correct.

Q Who's – who's required to maintain logs and where?

A There are a lot of logs in the election context. So secure

rooms require keycard access logs and also paper logs for folks who are there with authorized users to track who comes into a room with an authorized employee. We also require that the counties maintain chain of custody logs for every voting system component, ballots, there's a lot of logs in the process.

Q Now you mentioned that these things are kept sort of county by county. Let's say there was going to be, hypothetically, an issue in one county. Might that impact the other counties through their machines or otherwise?

A The machines between counties are also not networked with each other.

Q Okay, thank you for explaining that. Okay, so now I understand there's all of these requirements. How do you ensure that they are complied with?

A There are a few levels of checking that we do. First, counties are required to submit a security plan to our office 60 days before every election where they verify compliance with all of the requirements. We also, during November general elections, particularly presidential elections, visit the counties ahead of the election to review their security procedures, to advise them of areas where they may need to make adjustments, to provide support and questions when we're visiting them. We also are requested to come out and visit counties periodically as they make improvements to their secure areas to provide them with guidance on how to do it properly.

Q And – and do you know whether all of those steps were taken

for the 2024 election?

A They were, yes.

Q And just to give a little bit more color to that, how do you know that?

A Well, the staff that are on the teams that I oversee visited counties throughout the early voting period to have those conversations and do ADA assessments, VSPC security assessments as well as secure room assessments.

Q Okay, now I understand that you were present for at least some of the testimony today. I understand that the Court allowed that. Did you hear when Mr. Beall indicated that, you know, not all of the passwords were included on the spreadsheet?

A I did, yes.

Q Okay, do you know what that means not all of the passwords? In the context of what was included on the spreadsheet, were there other passwords that were not included on the spreadsheet?

A I'm not sure what you mean, were there other passwords not included. I mean, the county administrator passwords would not be in that spreadsheet.

Q Oh, what are those?

A Well the county administrator passwords are maintained in each county so every county user who has access to voting systems much maintain their own independent passwords.

Q And what is the purpose of having a different county password or county administrator password as opposed to a BIOS password?

A Well they're checks and balances. Our office maintains the BIOS passwords but countries need to use the equipment and set up elections, tabulate ballots. Some county users are doing voter intent adjudication in the process, so each of those folks needs to have a password to access a system that gives them the level of access that that job requires.

Q All right, if you remember anything else in terms of general security, feel free to bring it in but, for sake of time, I know that we have limited time here, I'm going to move on. So you're aware of the BIOS passwords being on a spreadsheet that was posted to the Secretary of State's website, correct?

A I am, yes.

Q All right, did you have involvement in the response to that?

A Yes.

Q All right, and what was the purpose of your involvement in that response?

A The purpose of my involvement was to coordinate deploying the teams to the counties and basically to sort our how many folks we needed to go out, how many folks, in addition to staff from our office were necessary to get those passwords changed quickly.

Q Okay, and getting the password changed quickly, have the passwords been changed?

A They have, yes.

Q Do you know when that was accomplished?

A Shortly before midnight on Thursday.

Q Okay, so you accomplished the purpose of your response to the password disclosure?

A Yes.

Q Are you familiar with the term risk limiting audit?

A I am, yes.

Q All right, what is that?

A The risk limiting audit is the post-election audit that we conduct in Colorado and have conducted since 2017.

Q All right, so it is a post-election audit, so I understand that it happens after the election. What is the purpose of it?

A The purpose of the audit is to ensure that the voting system tabulated the ballots cast in the election properly.

Q Tabulate properly meaning?

A Meaning that the voting system read the ballot exactly as the voter marked it.

Q Okay, so there's the ballot but that's different than the voting system? The ballot is a paper ballot?

A Every ballot cast in Colorado is a paper ballot.

Q Okay and so this process, the risk limiting audit, is designed to make sure that the system, the voting system component, actually read that ballot correctly?

A Correct.

Q And what's your involvement with the risk limiting audit?

A I have involvement in a couple of steps. We meet before the election to determine the risk limit that we recommended to the

Secretary. So I have those conversations with the staff. Following election night results, we also determine which contests drive the audit, so that determines how many ballots would be audited and which specific ballots much be reviewed. And then I provide support to the team while the counties and the county election judges who conduct the audit do that work.

Q Okay, so the actual audit is performed by the county election officials?

A That's correct, by bipartisan teams of election judges.

Q Bipartisan teams of election judges, okay. Approximately how many paper ballots get pulled into this?

A It varies. The way that the risk limiting audit works is that it takes into consideration the risk limit, which is three percent for the presidential election, the number of ballots cast in the target contest, and the margin in the contest. And so the more ballots and the tighter the margin, the more ballots that will need to be pulled to be audited. And we require both a statewide and a countywide race to be audited in every county and then those two contests are what drive the audit but when the county election officials are auditing, they audit every race on every ballot that's selected for audit.

Q Okay, so you mentioning that, you know, there's this paper ballot and then there's this equipment. If there was a discrepancy between the two, would the risk limiting audit process catch it?

A It would, yes.

Q What happens if there is a discrepancy?

A When the county election judges are auditing, they are basically looking at every paper ballot that's pulled for an audit and they use our risk limit audit system, which is separate from the voting system, to enter those selections. That system then compares that to the cast vote record from the voting system to make sure that they match – the selections match. If there is a discrepancy in that process, we investigate every discrepancy and if there are discrepancies in a targeted race, it may mean they need to audit more ballots in order to meet the risk limit. So the county would continue auditing until the risk limit is met, which means that they confirmed that the discrepancies in that – in the auditing do not mean that the outcome is incorrect.

Q Okay, so – so in Colorado, there have been instances when the paper ballot does not match what the system comes out with?

A So there are a couple of reasons that we've discovered for discrepancies. One reason is an error, a human error in pulling the correct ballot. So counties have implemented training and measures to make sure that they pull the correct ballot. We've also seen errors in recording the voter intent, either at the first instance or in the audit, or reasonable disagreements as to the voter intent because of how the voter marked the ballot. Or we've also seen that the voter marks their ballot in a way that isn't read by the system and so the system, in that case, can't properly record the voter intent and that is caught in the audit.

Q Okay, so those are all human errors, right?

A Those are all human, yes.

Q Okay, what about machine errors?

A Since we've conducted the risk limiting audit in 2017, we've met the risk limit every time and we have found that the voting system improperly interpreted voter selections and an outcome was incorrect.

Q Okay. Switching gears a little bit here, has Colorado performed a statewide headcount to your knowledge? Statewide, excuse me, hand count. I read my writing wrong.

A I don't believe there's been a statewide hand count in my career.

Q That was going to be my next question. Since, you know, since you've been working for the Secretary of State since 2006 or so, has that ever occurred?

A No, I don't believe so.

Q Okay, do you know why?

A I mean, millions of ballots are cast in Colorado and hand counting is inherently unreliable and very time and resource intensive because it is unreliable. It requires multiple teams of judges to record the voter markings as well as a hand tally of those – of those votes.

Q Is it required to use the electronic machines?

A I mean, yes, actually. Colorado law currently requires nearly every county to use the voting systems.

Q All right, I assume since you heard some of Mr. Beall's testimony you also heard when he was asked about confidence and the

importance of voter confidence in the system?

A Yes.

Q You're a voter in Colorado?

A I am.

Q Do you have confidence in the voting system?

A I do.

Q Should the public have confidence in the voting system?

A Yes, I believe they should.

MS. MORRILL: No further questions, Your Honor.

THE COURT: Cross examination?

MR. FIELDER: Thank you. Thank you.

CROSS EXAMINATION OF MS. HILLARY RUDY BY MR. FIELDER

Q Ms. Rudy, you mentioned the trusted build in your testimony, is that right?

A Yes.

Q And is that a situation where the hard drive is essentially – the software is essentially replaced in the voting system of a particular county?

MS. MORRILL: Foundation.

MR. FIELDER: Well, she's been allowed to testify with regard to the trusted build and the logic and accuracy tests so I would like to ask some questions about that.

THE COURT: Let's go ahead and start with the logic and accuracy test and see if we can get some foundation to what a trusted build is.

Q All right. Now the logic and accuracy test, is that where

test ballots are run through the system to determine whether or not they are tabulated correctly?

A Yes, that's correct.

Q Not actual ballots, is that right?

A That's correct.

Q And the logic and accuracy tests, those are done before an election like, for example, would they be done before a primary and then again before a general?

A The countries are required to conduct a logic and accuracy test before every election.

Q So that would mean before the primary and before the general?

A Yes, that's correct.

Q How about the trusted build? Is that done before the primary?

A No, a trusted build is done only when there is a voting systems upgrade or new hardware or another specific reason to do a trusted build.

Q Okay and all – and are all the trusted builds done primarily at the same time?

A Not necessarily, no.

Q Like, for example, when would the trusted build typically be done in counties across the state? Were they done last year, 2023?

A I don't recall specifically whether all counties had a trusted build done last year.

Q And was that when the BIOS password would be changed during the trusted build?

MS. MORRILL: Your Honor, this is outside the scope of my direct. It's also outside the scope of what we were asking Ms. Rudy to be qualified as an expert regarding.

MR. FIELDER: Oh, if she knows.

THE COURT: Overruled.

Q During the trusted build, is that where the BIOS password is changed?

A Our standard practice is to change the BIOS password when a trusted build is installed, yes.

Q Okay, now you said on redirect examination that the components that are used in our voting system here, our electronic voting system here in Colorado cannot be connected to the internet, is that what you said?

A They're prohibited from being connected to the internet, yes.

Q I'm sorry, what did you say?

A It is prohibited that they are connected to the internet.

Q Right, they can be connected to the internet but they're prohibited from being connected to the internet, is that fair to say?

A I think it's fair to say that a person could connect the system to the internet but that's why we have the security protocols, the requirements to file the security plan, as well as our county visits to ensure that that is not happening.

Q But part of that does not include the release of the BIOS password, as has been testified to throughout this hearing. That is not part of the security plan, is that right?

A I'm sorry, I don't understand your question.

Q Well I understand the security plan but you also understand that, for four months, your office published or had available to the public BIOS passwords that were connected to components in over 34 – 34 counties across the state, is that right?

A I understand that we had an equipment inventory list with BIOS passwords listed in our website for that period of time, yes.

Q And that's not part of the security protocol, is that fair?

A It's fair to say that that is not our security protocol, yes.

Q In fact, that would be a breach of the security protocol, isn't that right?

A It's fair to say that that is not complaint with our security protocol.

Q And it's the BIOS password that would enable a person or a user to connect or change the operating system so that a component could connect to the internet, isn't that right?

A If they had physical access to the equipment, yes.

Q Well, and there are some hackers that might be able to get into components that have the ability to connect to the internet just with the BIOS password, isn't that right?

MS. MORRILL: Objection, calls for speculation.

THE COURT: Overruled, if the witness knows.

A I have no specific knowledge about how to hack a system.

Q I mean, we're talking about some of the most sophisticated intelligence systems in the world, China, Russia, North Korea. You

don’t think that, through these BIOS passwords, that the operating system could be accessed by a foreign adversary.

MS. MORRILL: Same objection.

THE COURT: Sustained.

Q Is that possible, what I just said that, with the BIOS passwords, some of these components could be accessed remotely?

MS. MORRILL: Same objection.

THE COURT: Sustained.

Q Okay. Is it fair to say that you don’t know the answer to that question?

MS. MORRILL: Same objection.

MR. FIELDER: I think she could answer that question.

THE COURT: Overruled.

A That is outside the area of my expertise.

Q All right, okay, thank you. Now you also mentioned the networks of each of the counties. Do you know what I mean by that?

A I discussed county networks, yes.

Q For example, some counties just have one station, maybe with one Dell and one tabulator and – and, do you know what I mean?

A That’s not a county network.

Q I’m sorry?

A I – that’s a voting system, not a county network.

Q Yeah, a voting system, yeah, a voting system.

A A county network is different than a voting system.

Q Oh, okay, I’m just saying that the county has a voting system

network. Do you know what I mean by that?

A A county has a voting system.

Q Yes, and that voting system is all within its own little network?

A Some components are connected to each other, yes.

Q Right, and so the bigger counties have more components, right?

A Yes, larger counties-

Q They have more tabulators, they have more Dells, they have more screens, they have more components because they're a bigger county, right?

A Larger counties have more equipment, yes.

Q Right, and maybe not to the internet or maybe not to the county but the voting system is its own network, is that fair to say?

A Some components of the systems are connected, yes.

Q Okay, all right. So, for example, Denver has more than 20 tabulators, is that fair to say?

A I don't know the specific number of tabulators in use in Denver County.

Q But they have a lot, is that fair?

A I-

Q You know, a million people, they've got more tabulators, probably, than any other county, wouldn't you say?

A I don't specifically know the answer to that question.

Q Are they all on the same voting system network no matter how

many components they have?

A Some of the components of a voting system are connected to each other, yes.

MR. FIELDER: All right, thank you. Thank you. If I could just have one moment, I would like to confer with my client?

THE COURT: Yes.

MR. FIELDER: Thank you. Now how long have you been working for the Secretary of State?

A I've been with the – with the Division since 2006.

Q 2010?

A Six.

Q Six, a long time. Now isn't it true that the counties used to have the BIOS password, is that correct?

A I don't specifically know, no.

Q I'm sorry?

A I don't specifically know.

Q And are you aware that, ultimately, the Secretary of State, in approximately 2021 retained the BIOS passwords exclusive of the different counties, does that make sense?

MS. MORRILL: Objection, relevance.

THE COURT: Response?

MR. FIELDER: Just to establish that these BIOS passwords were the exclusive possession of the Secretary of State and not the counties.

MS. MORRILL: That's not in dispute, Your Honor.

THE COURT: You may re-ask the question, then.

Q Do the counties have the BIOS passwords?

A They do not.

Q Okay, only the Secretary of State's Office?

A The Secretary's Office maintains the passwords, yes.

Q And, within that, your office, only a small number of people know those BIOS passwords, is that right?

A Only a small number of people have access to where those passwords are maintained, that's correct.

Q And that wouldn't be you, is that right?

A That's correct.

Q Four people know those BIOS passwords in your whole office, is that fair?

MS. MORRILL: Objection, outside the scope of my direct and relevance.

MR. FIELDER: It's my last question, Your Honor. Four people.

THE COURT: Sustained.

Q Would you know how many people have the access to the BIOS passwords in your office, just a yes or no?

A I don't specifically know offhand, no.

Q A very small number?

A I don't specifically know offhand.

MR. FIELDER: Okay, thank you. Thank you very much, Your Honor. Thank you.

THE COURT: Redirect?

MS. MORRILL: Very quickly, Your Honor.

REDIRECT EXAMINATION OF MS. HILLARY RUDY BY MS. MORRILL

Q Just so that we are clear, the Secretary of State has the BIOS passwords. The counties, do they have the administrative passwords?

A Yes, that's correct.

Q Okay, does the Secretary of State have the administrative passwords?

A No, they do not.

MS. MORRILL: Okay, no further question. Oh, one minute, Your Honor, if you would allow?

THE COURT: Yes.

MS. MORRILL: Thank you. What's the purpose of having two passwords?

A So that there are checks and balances so that neither the county nor our office are able to make modifications to the system without working together.

Q Okay and, in reviewing, going through that protocol that we were talking about earlier when you went out to the counties, did you observe any evidence that both passwords had been used to make modifications?

A No. I'm not aware of any evidence of that.

MS. MORRILL: Okay, no further questions. Thank you.

THE COURT: All right, thank you. You may be excused. Respondent's next witness?

MS. MORRILL: Thank you, Your Honor. Respondents call Ben Edelen.

(Sneeze from gallery member)

THE COURT: Bless you.

UNIDENTIFIED MALE: Thank you.

THE COURT: Good evening. If you would raise your right hand? Do you solemnly swear or affirm, under the penalty of perjury, the testimony you provide today will be the truth?

MR. EDELEN: I do.

THE COURT: Thank you. Once you're seated, if you would please make sure you're close to the microphone.

MR. EDELEN: I will.

MS. MORRILL: I'll let you get some water.

MR. EDELEN: Thank you.

DIRECT EXAMINATION OF MR. BEN EDELEN BY MS. MORRILL

Q Good evening. What is your current position?

A I am the Chief Information Security Officer of the Colorado Department of State.

Q And how long have you held that deposition?

A For about two months.

Q Could I ask you to pull the microphone a little closer?

A Oh, absolutely. Of course.

Q So for about two months?

A Yes.

Q And prior to this position, what employment did you hold?

A I was the Chief Information Security Officer of Boulder County, Colorado.

Q And what were the dates of that employment?

A That was from September – well, it was from 2001, the summer of 2001 until September of this year.

Q And prior to that position?

A I was the Chief Information Security Officer of the City of Boulder for five years.

Q Is it fair to say that you have served as a Chief Information Security positions in state government since 2016?

A That is incorrect. In county and city government but in state government only for the last two months.

Q Thank you for clarifying that. And what do you do in your current position?

A In my current position I am the – I am the highest cybersecurity position within our organization so I am in charge of a small staff and, together, we coordinated all of the cybersecurity activities that protect the Secretary of State's operations, all of the services that we provide to the community and to toe her governments.

Q Are you familiar with cybersecurity protections that the Secretary of State's Office has?

A I am. Although I've only been there for two months, my primary work at the Secretary of State's Office has been to learn about the cybersecurity protections that we are implementing and to direct my staff to create continuity for those cybersecurity protections.

Q And are you familiar with the – the posting of the BIOS passwords on the Secretary of State's website?

A I am.

Q Okay and are you familiar with any efforts taken to remediate that issue?

A I am familiar with the fact that the website was changed and I'm also familiar with the efforts to visit the counties and change the BIOS passwords and perform some instructions on checking those systems.

Q Did you personally visit any counties?

A I did.

Q Will you please walk the Court through what you did when you arrived at the county?

A I arrived at a county and, it was Boulder County, and I went inside into their public space where I was met by their elections director and senior technology staff from the county. I was checked in and they reviewed my credentials as a Secretary of State employee. I was then issued a temporary security badge and I was informed that I needed to be escorted at all times within their facility and then I was escorted back through multiple locked doors to the area of their building that contained the elections equipment.

Q And were you alone?

A I was not. I was there with my boss.

Q And did you have a protocol when you walked – when you went to the Boulder County Clerk's Office?

A I did. We had four instructions and those instructions were to change the BIOS password from the old password to a new password, to review the BIOS configuration to confirm that it matched what was

expected within the BIOS, and then to ask the Clerk's Office to run a checker within their platform and that's outside of the space that our password gets into but in their operating system space, and to provide their door card access logs to the Secretary of State's Office.

Q Did you complete all of the steps in that protocol?

A I completed all the steps in that protocol for every computer that was on the list.

Q Did you change the BIOS passwords for all the voting system components that you encounter?

A I did and I did so – I performed all of those checks in full view of the staff, except the BIOS passwords, which I did privately.

Q And did you observe any evidence of unauthorized access to the voting system components?

A I observed no evidence of modification or unauthorized access to those components.

MS. MORRILL: Hold on just one second. No further questions at this moment.

THE COURT: Cross examination?

MR. FIELDER: Yes, thank you.

CROSS EXAMINATION OF MR. BEN EDELEN BY MR. FIELDER

Q And can I have pronunciation of your last name?

A It's Edelen.

Q I'm sorry?

A It's Edelen.

Q How do you spell that?

A Echo Delta Echo Lima Echo November.

Q Okay, thank you. I might just call you sir. Thank you.

A Okay.

Q Now you are an expert in cybersecurity, is that fair?

A I believe that I have a lot of experience in government cybersecurity.

Q And particularly out of Boulder, is that right?

A Yes.

Q And did you go to Boulder because you're kind of generally from that area and have experience in that regard?

A No, I moved to Colorado and the City of Boulder was a place that I was able to get a job so I didn't move there – I moved there specifically because that was where employment was available to me.

Q And I think you misunderstood me. You went to Boulder last week with regard to this issue concerning the changing of the passwords, is that right?

A That's correct.

Q I'm sorry?

A That is correct. I did go to Boulder.

Q And so that's what I'm asking, did you go to Boulder last week with regard to the password issue because you were just familiar with the Boulder situation?

A I'm actually not familiar with the Boulder situation. So while I ran the cybersecurity program for Boulder County, the Boulder Clerk and Recorder maintains her own cybersecurity and that

cybersecurity was a partnership of mine but I did not – I was not in charge of the security for Boulder County Clerk or the Boulder Elections.

Q And so had you ever worked on a voting machine before?

A No sir.

Q This is the first time that you've had to interact with a voting machine?

A Yes sir.

Q And you've heard the testimony that's been presented today, is that correct?

A I have.

Q And, in that regard, is it true that many of the components, for example, in Boulder, have the ability to connect to the internet?

A That is not true. The components that I looked at in Boulder, the components that I worked on had had any – I'm sorry, will you restate the question?

Q Well, I understand that components in their BIOS may be turned off from accessing the internet but where, for example, in Boulder did any of the components have Wi-Fi or Bluetooth wireless hardware or software that could be enabled through the BIOS system?

A All of the comportment that I worked on in the Boulder environment had had their wireless components physically removed from the computer to specifically address the concern. They also had any remnants of those components disabled in the BIOS when I reviewed the BIOS.

Q Well that's kind of what I'm talking about. Remnants of the components, those needed to be disabled in the BIOS?

A No, the physical hardware associated with the ability to connect wirelessly had been removed from all of the computers that I saw.

Q Is that part of the Dominion 5.17 software that's been utilized recently?

MS. MORRILL: Objection to foundation.

MR. FIELDER: Well he's an expert in these systems here.

MS. MORRILL: Your Honor, I didn't move to qualify him as an expert. Petitioner's counsel said he was an expert.

THE COURT: Right, sustained.

Q Are you familiar with the software that's being used in Boulder through the Dominion Voting Systems?

A No, sir. I was only familiar with the instructions that I was given for that day's activities.

Q Okay, and can you speak as to the other components that are across the State of Colorado with regard to whether or not they have Wi-Fi or Bluetooth configurations that can be enabled through the BIOS passwords?

A No sir, I cannot.

Q Could there be components throughout the state of Colorado that have Wi-Fi or Bluetooth wireless ability?

MS. MORRILL: Objection, speculation and – objection, foundation and calls for speculation.

THE COURT: Sustained.

Q Can you answer that question either way before I would ask it like I did? Are you just not aware whether or not the other components across the state of Colorado would have the ability to be configured for Wi-Fi or Bluetooth?

MS. MORRILL: Same objection to the extent that it references his previous question.

MR. FIELDER: I'm just asking if he would know because if he doesn't know then I won't ask.

MS. MORRILL: Same objection to the fact that it references a question that has been ruled on as being speculative and lacking foundation.

THE COURT: Sustained.

Q Now the release of the BIOS passwords, that was a security breach, wouldn't you agree?

A I believe-

MS. MORRILL: Objection to foundation.

MR. FIELDER: He's testified as an expert. I've got to be able to ask him questions with regard to-

THE COURT: Actually – actually, I don't – he has-. This individual has not been offered as an expert and so I will sustain the objection. This is a fact witness.

Q Okay, did you check the logs to determine – strike that. When you were in Boulder looking at the voting system there, is there the ability for someone of your abilities to check the logs to determine

whether or not any access had been made with the systems there? Was there an ability to check the logs?

A There's not an ability to check the logs for the area that the Secretary of State's password gave us access to. The only ability that we had was to confirm that the settings were exactly what was expected.

Q Okay, so through the use of BIOS passwords generally, can an individual turn on and off the ability of a component to connect to the internet?

MS. MORRILL: Objection, foundation and exceeds the scope of direct.

THE COURT: Sustained on foundation.

Q Would you know whether or not a computer that has wireless capability can be turned on or off through the BIOS?

A I – yes, if the computer has the components to join a wireless network then those components can be turned on or off in the BIOS.

Q And would that be reflected in the logs of the computer?

A No, it would not, only whether or not it was turned on or off would be reflected.

Q Okay, then did you check those logs?

A They were not logs, they were just settings, sir, and I did check the settings.

Q I'm sorry?

A They're not logs, sir, they were just settings and I did

check those settings.

Q Right, but not the logs?

A Right.

MR. FIELDER: All right, thank you. If I could have just a moment?

THE COURT: Yes.

Q So if, in the system that you checked, whether it was turned on or off previously to you being there, you wouldn't be able to tell through your examination, is that fair?

A No, if it had been turned on, I would have seen that it was enabled in my assessment.

Q Well I know if it was still on during your examination, you might have turned it off but were you able to determine whether or not it was turned on and then back off again?

A No.

MR. FIELDER: All right, thank you. No further questions, Your Honor.

THE COURT: Redirect?

MS. MORRILL: No questions. Thank you.

THE COURT: You are excused. You may return to your seat. Respondent's next witness?

MS. MORRILL: Thank you, Your Honor. The respondents rest.

THE COURT: Any rebuttal by plaintiff or petitioner, excuse me.

MR. FIEDLER: No, thank you.

THE COURT: All right. We will then go into closing argument.

MR. FIELDER: Thank you very much, Your Honor. Well I don't think

that it's a matter of semantics that the Office of the Secretary of State is a person. An individual can be a person, a corporation, a government entity, and so when I hear on one hand that the authority to pass rules and regulations is within the office and not the elected official but, on the other hand, that it might be a strain of that definition to hold the office responsible, well I don't think that that's a valid distinction. In the election code, under Title 1-113-708, which I have an exhibit of but, of course, the Court can not only take judicial notice of it, it's the law, any person – now it says who knowledge publishes but I'm skipping to the disjunctive, "Any person that causes to be published," and I would argue that being published is available on the internet. I'm not trying to be cute but Julian Assange published information on the internet. This has been published. It was available and it was a mistake and it was a security breach and it was a serious security breach as both of our not both experts, Mr. Smith, but also our other witness that testified with regard to this issue. These passwords were out, they were confidential, and the statute talks in terms of that person having their authority revoked. However, as soon as it was revealed to the Secretary of State, instead of conducting a criminal investigation doing what they did back in the Mesa County, that's why I entered those exhibits, they issued these particular orders with regard to the necessity of relaying all this information so that they could research the matter, taking the component out. That's why I wasn't involved in certification or, now, the use of the word – the one that we used in the petition, which would

require the destruction. Just the non-use of those components. Now I said 63 out of 64 cause that was the public reporting and that was essentially confirmed that the BIOS password may have been related to that many counties but I will absolutely, certainly, take the attorney General's word that there are 34 counties in which components were being used that the BIOS passwords, which were released on the internet, are associated. That list could be given to the Court and I would ask that the Court issue an order, number one, ordering – strike that. Number one, that a breach of the Secretary of State's duties has been established and that's really part of 113. If a person like Mr. Wiley or the Libertarian Party believes that a breach of duty has occurred or will occur, well then we're filing it under 113, not challenging the certificate or the certification, but the use of the machines, which has been done before, and so I entered those previous orders to establish that there is a precedent for taking those instruments out of use. We counted votes in this state for 125 years or more. I think we can count paper ballots that have been submitted. The election will go on. Everybody is submitting their ballots through mail or voting in person tomorrow and those ballots can be counted. However, by using components within a system that is networked at least within the county, those 34 counties are at risk and I would ask that the Court find a breach, that it order that the Secretary of State desist from any conduct in the future which would expose these passwords to the public again, and that, as a remedy for this election, that the – the Secretary of State not be interacting with any more instruments

and, because they changed the passwords and, while they were doing it, issued this order, I would ask that that temporary emergency order be revoked and that the devices that were used not be used I the upcoming election or that no other device be accessed by the Secretary of State. The counties can count the vote. The counties can do it and because, obviously, if one instrument or component is affected, that whole network together is affected. So I think our relief has been relatively well outlined in our petition. I thank the Court for allowing us to engage I this hearing. I object to the Attorney General's assertion that the Court lacks jurisdiction. This is an extraordinary matter and it requires extraordinary relief, but not really. We're counting the ballots. The ballots will be submitted and I respectfully disagree that hand counting is not a proper way to count votes because that's what we did for many, many years. And because there's been a breach of the security system, I would ask that those components in the 34 counties not be used. Thank you very much, Your Honor.

THE COURT: And, if I may, before-. Mr. Fielder, I had – just to make sure that I understand, with respect to C.R.S. 113-708(2), you said I want to move into the disjunctive so I just want to make sure that I understand, "Any person who knowingly causes to be published?"

MR. FIELDER: Yes.

THE COURT: Okay, I just wanted to make sure that I understand that that was your argument.

MR. FIELDER: Yes, Your Honor.

THE COURT: Thank you for carrying that.

MR. FIELDER: There was some mention of intent or, obviously in the statute it's knowingly, but we don't really know. All we know is that they were caused to be published by the Secretary of State.

THE COURT: All right, thank you.

MR. FIELDER: Thank you.

THE COURT: On behalf of respondents?

MS. MORRILL: Thank you, Your Honor. I think the petitioner's focus on the events in 2021 in Mesa County is extremely instructive to the Court and the parties in this proceeding because, beginning with their exhibits nine through 11 that have been admitted into the record here today, each of those exhibits turning page by page, each of them, single spaced, small font, carefully, thoroughly detailing the facts that were known to Secretary Griswold's office beginning in August – August 2nd, as a matter of fact, 2021, and moving forward through August 17 when the last election order related to that security breach was issued by – by her to the Mesa County Clerk. That shows that, in the past, the Secretary's Office has been confronted with serious security breaches and, when confronted with such a breach, it has undertaken an orderly, thoughtful, and, most of all, informed investigation based on the facts that were initially available to the agency and then later as more facts became available through their active investigation. And comparing what happened in 2021 in Mesa County with what we know and the facts before the Court in this hearing have revealed, the Secretary's Office has, again, taken the same orderly, thoughtful, and

informed process for confronting what the evidence shows or there is no evidence in the record before this Court whatsoever that the posting of the BIOS passwords on the Department of State's website was knowingly done, meaning with actual knowledge by the Secretary, the Deputy Secretary, any staff of the Secretary of State's Office. All of the facts that are availed to the Court present that that was an unknowing, inadvertent, mistaken disclosure of the passwords but, of course, that – the fact that it was a mistake and that those are the only facts that are known to this Court at this time and there's nothing in the record to suggest otherwise does not mean that it's not a serious problem. The Deputy Secretary himself testified, yes, we acknowledge this is a serious problem. What the record reveals is that the Secretary martialed enormous internal and external resources of the State of Colorado to bring them to bear on this serious problem and that, in the span of a week, August 24th, 2021 through October 31st – I'm sorry, August – October 24th, 2024 and October 31st, 2024, the span of a week, the Secretary took steps to change all of the affected BIOS passwords, meaning those passwords that were identified on the spreadsheet posted on the Department's website and that were determined to be still in active use for certain voting system components across the state and, in fact, accomplished this huge feat in one week, part of which was done through using the legal tools available to her office, namely the adoption of temporary rule that the petitioners challenge as invalid but, additionally, an enormous amount of human power and financial resources of the State of Colorado to deploy human

assets across 34 counties and to change passwords on over 600 voting system components. I would note that that 600 voting system – over 600 voting system components is consistent with, I believe, Mr. Smith's calculation of the number of voting system components that he determined were compromised by the BIOS password exposure. So that is what the Secretary intentionally endeavored to do because of the serious nature of the problem that the BIOS password leaked, I'm sorry, the BIOS passwords were exposed. But what is absent from the record before this Court is any definitive evidence presented by petitioners that, in fact, any voting system component was accessed in an unauthorized fashion, much less then altered or modified in a way that would allow that competent to compromise or manipulate the accuracy of the results of tomorrow's election. That is utterly absent. There is testimony from Mr. Smith as an expert, from Mr. Parikh as a non-expert, that it's a – it's a big problem to expose BIOS passwords. There's no dispute about that from the Secretary of State. So what we have, though, is petitioners trying to take a massive leap from the mere exposure of the passwords to asking this Court to assume, utterly based on supposition and, in some cases, outright fearmongering such as references to China, Russia, internal threats at the county clerk's offices, but with no actual evidence that any of that has occurred. They would like this Court to take a massive leap and say that because the BIOS passwords were exposed for a certain period of time that that, ergo, means that the voting system components were – their security was, in fact, breached and – and that breach will have negative

consequences on the accuracy of tomorrow's election. Respectfully, Your Honor, that – that assertion, that leap without evidence underpinning it, is not consistent with what petitioner's burden is under C.R.S. 1-1-113. I know I presented the Court with, as part of the respondent's brief, with several jurisdictional thresholds why this Court doesn't even have to reach the relief requested, the merits of the relief requested under 1-1-113, but I'm going to assume that, after having this hearing, that it's possible that the Court may wish to address that and it's very clear in the statute that the petitioners bear the burden of proof and the recorded here is equally clear that they have utterly failed to meet it. In fact, what the record shows, both, again, in the Secretary's orderly, thoughtful, and informed investigation and remediation efforts of the BIOS password exposure is that she and her employees and other personnel from across the state of Colorado, government personnel, I should empathize, from across the state of Colorado, have complied with what the law refers to as the presumption of regularity that is supposed to be afforded to government officials when conducting their duties. I would point the Court to *Crested Butte South Metro District v. Hoffman* that's at 790 P.2d 327, pin point 329. That's a Colorado Supreme Court case from 1990 in which the Court stated, "It is well established that courts presume the validity of regularity of official acts of public officials and entities and, furthermore, courts presume that public officials discharge their duties properly and in compliance with the law." There are citations in support of the Supreme Court's holding in that regard

but I have omitted them from here but they are in the case. What petitioners are asking this Court to do is ignore the presumption of regularity that has been afforded or that the law, I should say, affords to the Secretary, the Deputy Secretary, the employees of her office that doesn't require the high bar of never making a mistake and an inadvertent error. But what it does require is that if the Court is going to overcome that presumption of regularity, it must be based on some evidence before the Court, actual evidence that, in fact, the government official was acting contrary to or in violation of their duties under state law. Again, I would point the Court to the 2021 Mesa County incident and the comparison to the handling of the BIOS password incident and suggest to the Court that there is no such evidence in this record and, therefore, the Secretary and her entire Department is entitled to this presumption of regularity. Additionally, I would note that in one of the cross examination questions, petitioner's counsel suggested that, oh, County Clerks could also present threats from within and their employees could present threats from within because, again, the BIOS passwords is one of two sets of passwords that an individual must have both passwords, the BIOS password from the Secretary of State's Office and the administrative password from the County Clerk who is the custodian of the voting system components. And, like safety deposit box, must input both passwords into the component in order to unlock the keys to the kingdom, so to speak. And so petitioners and their counsel are suggesting that not only should this Court assume that the Secretary and her staff were not acting in

accordance with the presumption of regularity but also that an unidentified county clerk or employee of a county clerk's office was doing the same. Unlike in 2021 where there was actual evidence of a security breach, again, outlined in detail at exhibits nine through 11 the petitioners admitted, there is no such evidence in this case. So the county clerks should also be afforded the presumption of regularity that the law requires under, again, the case law that I pointed the Court to. Finally, I want to very briefly touch on the remedy the petitioners seek. It's extraordinary, it's unprecedented, and, as you heard from Hillary Rudy, and election administration expert in the state of Colorado, it is inherently less reliable than using electronic voting systems to tabulate the ballots that are cast in Colorado. Now Ms. Hillary Rudy also testified that every person who casts a vote in Colorado's state or federal elections does so using paper. One's mail ballots are paper ballots. If you vote in a polling system, you are presented with a paper that reflects the votes that you case in the polling booth – in the voting booth, I should say, and that – those paper trails exist now and they will exist after the election. They are always resorted – capable of being resorted to and, in fact, are utilized through the State's risk-limiting audit, which has been a process that Colorado law has mandated from 2017 through the present and is statistically designed to capture what is petitioner's, again, boogeyman of a concern here is that the mere, again, exposure of one set of BIOS passwords that, again, are two sets needed to access voting system components means that, ergo, you cast your vote for one

individual and now the voting system component is going to report it as being cast for a different individual or you voted yes on a ballot issue and the machine is going to switch your vote. The risk-limiting audit will catch that and so we would ask the Court to, again, afford the Secretary the presumption of regularity, look to the Election Code and Secretary's rules that lay out the process for the orderly conduct of elections in Colorado and understand that there will be checks and balances even after we all go home today. Those checks and balances will ensure that our elections are accurate and fair and, again, secure because of the steps that the Secretary has taken, in large part to address the security incident connected to the BIOS password. Unless the Court has any questions, we would ask the Court to deny the relief requested by the petition and discharge proceedings under 1-1-113?

MR. FIELDER: 30 seconds, Your Honor, of rebuttal?

THE COURT: Yes, I was going to offer you a rebuttal.

MR. FIELDER: Thank you. Just a couple of things. Imagine the Libertarian Party coming in right now just on a general grievance, which I've made the mistake of making before, that the system isn't secure, it could be hacked, there's all kinds of problems. Well, then we'd be thrown out of Court. But we're not here because of that. The presumption of regularity has been overcome by the Secretary of State's own admission so we're talking about a security risk of the state's voting rights. So it's not about evidence that someone accessed it or did something. There's a security risk and there's not enough time to

figure it out. So 113 talks about a verified complaint in a district court alleging that a person charged with a duty has committed a breach or a neglect of duty. Clearly, there's been a neglect of duty. Clearly there's a – there's been a breach. Now, I guess it's a matter of degree. We say it's a serious breach, they say it's not but the bottom line is this, many of the components can be switched on to become a wireless component but only through the BIOS and with the BIOS password, you don't need the user password. A sophisticated person, maybe even remotely, can access these devices. So safety, why do we have paper, because maybe in an extraordinary circumstance we need to fall back. Imagine just using a touch screen without a paper but most people's ballots are mail-in. I know there's handicap people that use the touch pad to create a ballot at the polling place but, even then, there's paper to be counted. Thank you very much, Your Honor.

THE COURT: All right, the Court will ask each side to upload their exhibits. The Court will maintain exhibit one and it will be lodged in the Clerk's Office tomorrow. It was not admitted but due to the hour of five – ten minutes to six p.m. the Clerk's Office closed at four p.m. so petitioners cannot lodge it with the Clerk today so the Court will secure that and lodge it with the Clerk as an admitted – tendered but not admitted exhibit one. If the parties have copies of their admitted exhibits, I would be grateful for those. Also, I would ask if each side, both petitioners and respondents, would please provide a list of the witness's first and last name's spellings so the Court has them for the benefit, which then leads us to the last item. The Court will,

given the length of the hearing and the time of the evening, review, again, the briefing, the evidence, and the argument made, take it under advisement, and written – and issue order – and issue a written order in due course. If there is nothing further, then, if the parties would please secure the uploads of exhibits, copies of exhibits for the Court's consideration this evening with the exception of exhibit one and provide that list. The Court will be in recess.

MR. FIELDER: Thank you very much, Your Honor.

THE COURT: Thank you.

(case ends at 5:52:02 p.m. FTR recording time)

TRANSCRIPTIONIST'S CERTIFICATE

The above and foregoing is a true transcript of the hearing in proceedings taken in the above-entitled case, which was audio recorded in the Denver District Court at the time and place set forth above, which was listened to and transcribed to the best of my ability.

Done this 17th day of November, 2024.

/s/ Charles A. Aaron
Charles A. Aaron, Transcriptionist

/s/ Cheryl Bassett
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